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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1941~~ 1942

No. ~~979~~ 29

O. B. WILLIAMS AND LILLIE SHAVER HENDRIX,
PETITIONERS,

vs.

THE STATE OF NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

PETITION FOR CERTIORARI FILED FEBRUARY 26, 1942.

CERTIORARI GRANTED MARCH 30, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No.

O. B. WILLIAMS AND LILLIE SHAVER HENDRIX,
PETITIONERS,

vs.

THE STATE OF NORTH CAROLINA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 4, 1942.

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[fol. 1]

IN SUPERIOR COURT OF CALDWELL COUNTY

STATE

v.

O. B. WILLIAMS and LILLY SHAVER HENDRIX

ORGANIZATION OF THE COURT

Be it remembered, that a Superior Court Term is begun and held for the County of Caldwell, at the Courthouse in Lenoir, North Carolina, on the first Monday before the first Monday in March (it being February 24, 1941), when and where the Honorable H. Hoyle Sink being present and holding the said Court.

Honorable L. S. Spurling, Solicitor for the 16th Judicial District, being present and prosecuting in behalf of the State.

J. F. Parlier, Sheriff of Caldwell County, North Carolina, returned as summoned by him, the following good and lawful men to serve as jurors: A. S. Nelson (Foreman) and others (naming them).

IN SUPERIOR COURT OF CALDWELL COUNTY

BILL OF INDICTMENT

The jurors for the State, upon their oath, present: That O. B. Williams and Lillie Shaver Hendrix, late of the County of Caldwell, on the 4th day of October, in the year [fol. 2] of our Lord One Thousand Nine Hundred and Forty, with force and arms, at and in the county aforesaid, unlawfully, wilfully and feloniously did get married to each other in the City of Las Vegas in the State of Nevada, and thereafter returned to the State of North Carolina and did live together and cohabit together in the said State of North Carolina and in Caldwell County, the said O. B. Williams having a living wife, one Mrs. O. B. Wyke Williams, living in Caldwell County, North Carolina, at the time of his said marriage to Lillie Shaver Hendrix and the said Lillie Shaver Hendrix having a living husband, one Tom Hendrix, living in Caldwell County, North Carolina, at the time of her marriage

to the said O. B. Williams, against the form of the statute in such case made and provided and against the peace and dignity of the State.

L. S. Spurling, Solicitor.

Returned a True Bill:

A. S. Nelson, Foreman Grand Jury.

In Superior Court of Caldwell County

Plea

And the said O. B. Williams and Lillie Shaver Hendrix are brought to the bar of the Court here in their proper persons, by the said Sheriff of Caldwell County, in whose custody they are. And forthwith, it being demanded of them how they will acquit themselves of the premises in the said indictment, above specified and charged upon them, they saith that they are not guilty thereof, and thereof for good and for evil they put themselves upon the Country. And L. S. Spurling, Solicitor who prosecutes for the State on this behalf, does the like.

In Superior Court of Caldwell County

Verdict etc.

Therefore, let a jury come of good and lawful men, by whom the truth of the matter may be better known. The prisoners, O. B. Williams and Lillie Shaver Hendrix, are remanded to jail. And at the same term of said court, in the custody of the Sheriff of Caldwell County, the said O. B. Williams and Lillie Shaver Hendrix are again brought [fol. 3] to the bar of said Court, and the following jury of good and lawful men, towit: R. S. Webb and eleven others (naming them), sworn and impaneled to speak of and concerning the premises, upon their oaths, say that said O. B. Williams and Lillie Shaver Hendrix are guilty as charged in the Bill of Indictment.

Upon the coming in of the verdict the defendants and each of them, in apt time, move the court to set the verdict aside as being against the greater weight of the evidence

and the law in the case, and for errors assigned and to be assigned. Motion denied in each case as to each defendant, and the defendants and each of them except.

To the judgment the defendants, and each of them, except in open Court and appeal to the Supreme Court of North Carolina. Notice of appeal given in open court. Further notice waived. The defendants, appellants shall be allowed 60 days in which to make up and serve statement of case on appeal upon the State's counsel, and the State's counsel shall be allowed 60 days after the service of the case in which to served counter-case or file exceptions. Appeal bond in each case is fixed by the Court at $150.00. Appearance bond in each case is fixed at $2500.00, to be justified and approved by the Sheriff of Caldwell County.

IN SUPERIOR COURT OF CALDWELL COUNTY

Statement of Evidence

STATE'S EVIDENCE

MRS. CARRIE WILLIAMS testified as follows on Direct Examination: That she was a Wyke before her marriage; that she now lives about four miles east of Granite Falls, Caldwell County, North Carolina; that she married O. B. Williams on May 30, 1916, in Caldwell County; that she and Williams lived together as husband and wife between 23 and 24 years, or until about May 7, 1940; that they had reared a family of four children; that they had not lived together since May 7, 1940; that she had not brought any action for divorce against O. B. Williams.

[fol. 4] Cross-examination:

I happened to have a paper that the Sheriff served on me here. I read it.

TOM HENDRIX, on Direct Examination, testified as follows: I live in this county. I was married to Lillie Shaver Hendrix about twenty years ago. We lived as husband and wife at Saw Mills in this county until May, 1940. We have not lived together since that time. I have brought no divorce proceedings against my wife.

Cross-examination:

Witness admits his signature on a card. Said card is identified as Exhibit No. 1.

OFFER IN EVIDENCE

CERTIFICATE OF MARRIAGE

99133 33251

STATE OF NEVADA,
County of Clark, ss:

This Is To Certify That the undersigned, C. H. Sloan, did, on the 4th day of October, A. D. 1940, join in lawful wedlock O. B. Williams of Las Vegas, State of Nevada, and Lillie Esther Shaver of Las Vegas, State of Nevada, with their mutual consent in the presence of Mrs. Jack Pembroke and Mrs. Charles H. Sloan, who were witnesses.

C. H. Sloan, Baptist Minister.

Mrs. Jack Pembroke, Mrs. Charles H. Sloan, Witnesses.

Recorded at the request of C. H. Sloan,
Filed Oct. 8, 1940.

David Farnsworth, County Recorder.

RECORDER'S CERTIFICATION

STATE OF NEVADA,
County of Clark, ss:

I, David Farnsworth, the duly elected, qualified and acting County Recorder, in and for the County of Clark, State of Nevada, do hereby certify and declare the above (attached) to be a full, true and correct copy of that certain Marriage Certificate of Record in Book 17 of Mar. Cert., page 360, Clark County, Nevada, Records.

[fol. 5] Witness my hand and official seal, this 17th day of February, A. D., 1941.

David Farnsworth, John Beodle, Dep.

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court

of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record, having a seal, which is annexed hereto), do hereby certify that David Farnsworth, whose name is subscribed to the foregoing certificate, was at the time of signing the same, the duly elected, qualified and acting County Recorder in and for the County of Clark, State of Nevada, and authorized to execute said certificate. And I do further certify that the signature of the said David Farnsworth, appearing upon the foregoing certificate is genuine.

In witness whereof, I have hereunto set my hand and annexed the Seal of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, this 18th day of February, 1941.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District Court for the State of Nevada, in and for the County of Clark. (Seal.)

STATE OF NEVADA,
County of Clark, ss:

I, George E. Marshall, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify that Lloyd S. Payne is County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record having [fol. 6] a seal); that the signature of the said Lloyd S. Payne, as such officer; that the seal annexed thereto is the seal of said District Court; that said Lloyd S. Payne, as such Clerk, is the proper officer to execute the said certificate of attestation, and that such attestation is in due form according to the laws of the State of Nevada.

In witness whereof, I have hereunto set my hand in my official character as such Judge, at the City of Las Vegas, County and State aforesaid, this 18th day of February, A. D., 1941.

George E. Marshall, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark.

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record, having a seal, which is annexed hereto), do hereby certify that George E. Marshall, whose name is subscribed to the foregoing certificate of due attestation, was, at the time of the signing the same, Judge of the District Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In witness whereof, I have hereunto set my hand and annexed the seal of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark this 18th day of February, 1941.

[fol. 7] Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark. (Seal.)

CHARLES TEAGUE, on Direct Examination, testified: That he knew O. B. Williams and Lillie Shaver Hendrix; that he had a conversation with them sometime last Fall in Avery County; that he had seen them together in Granite Falls a number of times; that he saw them in daytime; that when he saw them in Avery County they were in the cafe.

I. M. VANCE, on Direct Examination, testified: That he lived at Pineola, in Avery County; that he was one of the County Commissioners; that he has known O. B. Williams since he has been in Avery County, which has been about seven or eight months; that he knows Lillie Shaver Hendrix, the female defendant. I have seen them together in my store and at church and at homes where they were visiting the sick. I have been in their home, and they have a home in Pineola, and I understand they own it.

I have seen Mr. Williams and Mrs. Hendrix there at their home. I don't think I have ever been there when only the two of them were there. The defendants have been in my home but I would not say whether it was daytime or night. I have seen them together in the automobile and at church and around Pineola. They were together about all the time. They buy some groceries from my place. I know of no one living in their home with them. They always paid cash. My wife and I went to Mr. Williams' home to see some people once, and at another time made a social visit. To the best of my knowledge this was at night. There were about six or eight other people there. No refreshments were served. Both Mr. Williams and the lady greeted us at the door. I have seen them together about eight months. [fol. 8] I couldn't say that they cook and eat at their home. They live there.

Cross-examination:

On the occasion of the visit Preacher Greene and others were there. I have known the general reputation of O. B. Williams and the lady since they have been in my community, and it has been excellent.

T. A. THOMPSON, on Direct Examination, testified: I live in Pineola, Avery County. I know Mr. Williams and have known him since some time in February. I met them at Pineola Baptist Church.

Q. Do you know whether they are living together and have been living together for sometime in Pineola as husband and wife?

Defendants object—overruled—exception.
This is defendants' Exception No. 1.

A. Yes.
Q. Have they?

Defendants object—overruled—exception. Exception No. 2.

A. Yes.

To the best of my knowledge they have lived together since about August or September, I wouldn't say exactly.

I have seen them together quite a little bit at church and around at Preacher Greene's at the parsonage. I have seen them together maybe twice a week or maybe sometimes once a month. I saw them at the Post Office one evening last week.

Cross-examination:

I know the general reputation and character of O. B. Williams since he has been in our community, and it has been perfectly good. I know the general reputation of the female defendant since she has been in our community, and it is good.

[fol. 9] R. G. Buchanan, on Direct Examination, testified: I live in Pineola, Avery County. I know the two defendants, Mr. Williams and the woman, and have known them for about eight months. They live in Pineola as man and wife.

Cross-examination:

I have known them something like six or eight months. I have been to their home twice. I have known their general repatation since they have been in the community, and it is good.

Redirect examination:

I have seen them together very often. It has been about two weeks since I last saw them together.

Recross-examination:

Most of my contact with the defendants has been at church and at Sunday School.

State Rests.

Order Denying Motion for Nonsuit

At the close of the State's evidence the defendants and each of them move for judgment as of nonsuit. Motion denied as to each defendant, and the defendants and each of them except.

DEFENDANTS' EVIDENCE.

Exception No. 3.

The Defendants Offered the following evidence:

Exhibit No. 1, identified by Thomas Hendrix. The addressed side of the card is as follows:

"I. S. Thompson, Attorney at Law, Rooms 5 & 6, Griffith Bldg., Las Vegas, Nevada."

The reverse side of the card is as follows:

"Dear sir:

Upon receipt of the original appearance, I will sign the same.

(Signed) Thomas Hendrix."

Defendants' Exhibit No. 2 (Exemplified copy of the divorce proceedings from the Eighth Judicial District of the Court of the State of Nevada in and for Clark County in an action entitled Lillie Esther Hendrix v, Thomas George Hendrix):

[fol. 10] IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

GEORGE THOMAS HENDRIX, Defendant

COMPLAINT

The plaintiff complains of the defendant and for cause of action alleges:

I. That on June 27th, 1920, in Icard, State of North Carolina, the plaintiff and the defendant intermarried and ever since have been and are now wife and husband.

II. That plaintiff is now and has been a resident of the State of Nevada for a period of more than six weeks immediately preceding the commencement of this action; she

has been, and now is a resident of the County of Clark, State of Nevada.

III. That there is no issue of said marriage.

IV. That the defendant has willfully neglected for the period of over one year immediately preceding the commencement of this action to provide plaintiff with the common necessities of life, although having the ability to do so; that such neglect was and is not the result of poverty on the part of the defendant, which he could not avoid by ordinary industry.

For a second and separate cause of action against the defendant, plaintiff alleges:

V. That the allegations set forth in paragraphs I, II, and III, of plaintiff's first cause of action are true and are hereby made a part of this cause of action.

VI. That during the term of said marriage, the defendant has been guilty of extreme mental cruelty toward this plaintiff by his words, actions and conduct; and plaintiff therefore alleges, that during the term of said married life the defendant has been guilty of extreme cruelty toward the plaintiff.

[fol. 11]. Wherefore, plaintiff prays judgment against the defendant dissolving the bonds of matrimony now existing between the plaintiff and the defendant, and restoring said parties to the status of single persons.

L. S. Thompson, Attorney for Plaintiff.

STATE OF NEVADA,
County of Clark, ss:

Lillie Esther Hendrix, being first duly sworn deposes and says that she is the plaintiff in the above entitled action, and that she has read the foregoing complaint and knows the contents thereof, and that the same is true of her own knowledge.

Lillie Esther Hendrix.

Subscribed and sworn before me, this 26th day of June, 1940. L. S. Thompson, Notary Public. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

THOMAS GEORGE HENDRIX, Defendant

AFFIDAVIT FOR PUBLICATION OF SUMMONS

Filed July 22, 1940.
Lloyd S. Payne, Clerk, by Helen Scott, Deputy.

STATE OF NEVADA,
County of Clark, ss:

Lillie Esther Hendrix, being first duly sworn, deposes and says that she is the plaintiff in the above entitled suit; that the complaint in said action has been filed with the Clerk of the above Court and summons thereupon issued; that said action is brought to recover a judgment of the above Court dissolving the bonds of matrimony now existing between the plaintiff and defendant, on the grounds [fol. 12] of extreme cruelty; that such causes of action are more fully set forth in plaintiff's verified complaint on file herein, to which you are referred to for further particulars and which is hereby made a part of this affidavit; that the defendant is a necessary and proper party defendant in this action.

That the defendant, Thomas George Hendrix, resides outside the State of Nevada, to-wit, at 391 Fuller Street, Akron, Ohio, and that he is not now and cannot be found in the State of Nevada and that defendant's present place of residence is 391 Fuller Street, Akron, Ohio.

Affiant, therefore, says that personal service of the summons in this action cannot be made upon the defendant, Thomas George Hendrix, and prays for an order that service of the same be made by publication thereof.

Lillie Esther Hendrix.

Subscribed and sworn to before me, this 20th day of July, 1940. I. S. Thompson, Notary Public. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

THOMAS GEORGE HENDRIX, Defendant

ORDER DIRECTING PUBLICATION OF SUMMONS

Filed July 22, 1940.
Lloyd S. Payne, Clerk, by Helen Scott, Deputy Clerk.
Clerk.

Upon reading and filing the affidavit of Lillie Esther Hendrix, the plaintiff above named, and it satisfactorily appearing therefrom that the defendant, Thomas George Hendrix, resides out of the State of Nevada and at 391 Fuller Street, Akron, Ohio; and it also appearing from the complaint herein duly verified by the plaintiff, that [fol. 13] good cause of action exists in this action in favor of the plaintiff, Lillie Esther Hendrix, and against the defendant, Thomas George Hendrix, and that the defendant, Thomas George Hendrix, is a necessary and proper party defendant thereto; and it further appearing that a summons has been issued out of said Court in this cause and that a personal service of the same cannot be made upon the defendant, Thomas George Hendrix, for the reasons hereinbefore contained, and by the said affidavit made to appear.

On motion of I. S. Thompson, attorney for plaintiff, it is ordered that the service of the summons in this action be made upon the defendant, Thomas George Hendrix, by publication thereof in the Las Vegas Evening Review Journal, a newspaper published in the City of Las Vegas, County of Clark, State of Nevada, hereby designated as the newspaper most likely to give notice to said defendant; that said publication be made for a period of four weeks and at least once a week during said time.

And it further in like manner satisfactorily appearing to me that the residence of said defendant is known as 391 Fuller Street, Akron, Ohio, and that his post office address

is 391 Fuller Street, Akron, Ohio; it is ordered and directed that a copy of the summons and complaint in this suit be deposited in the United States Post Office at the City of Las Vegas, County of Clark, State of Nevada, postpaid, directed to said defendant at his said post office address.

Dated this 22 day of July, 1940.

Roger Foley, District Judge.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

THOMAS GEORGE HENDRIX, Defendant

SUMMONS

[fol. 14] Returned and filed October 4, 1940.
Lloyd S. Payne, Clerk. Dolores Yturri, Deputy.

The State of Nevada sends greetings to said defendant:

You are hereby summoned to appear within ten days after the service upon you of this summons if served in said County, or within twenty days if served out of said County but within said Judicial District, and in all other cases within thirty days (exclusive of the day of service), and defend the above entitled action.

This action is brought to recover a judgment dissolving the bonds of matrimony that now exist between you and the plaintiff on the grounds of your willful neglect, and your extreme cruelty toward plaintiff, all of which will more fully appear from plaintiff's verified complaint now on file in this action, to which you are referred for further particulars.

Dated this 26th day of June, A. D., 1940.

Lloyd S. Payne, Clerk of the Eighth Judicial District Court of the State of Nevada, in and for Clark County, Nevada. By: Tilla Cronick, Deputy.

I. S. Thompson, Attorney for Plaintiff, Rooms 5 & 6 Griffith Bldg., Las Vegas, Nevada. (Seal.)

13—1575

Sheriff's Return

Received at Sheriff's Office, Summit County, July 24th, 9:19 A. M., 1940.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

THOMAS GEORGE HENDRIX, Defendant

[fol. 15] AFFIDAVIT OF MAILING COPY OF SUMMONS AND COMPLAINT

Filed October 4, 1940.
Lloyd S. Payne, Clerk. By: Dolores Yturri, Deputy.

STATE OF NEVADA,
County of Clark, ss:

George W. Thompson, of said County, being duly sworn, says that he is over the age of twenty-one, and is not a party to the above-entitled action;

That on the 26th day of June, 1940, the complaint in said action was filed and that thereafter an order was made by the Court for the publication of the summons in said action; and also a further order that a copy of said summons should be deposited in the United States Post Office at Las Vegas, in said County and State, directed to the defendant, Thomas George Hendrix, in said action, at his place of residence, to-wit, number 391 Fuller Street, in the City of Akron, County of Summit, State of Ohio; that, to-wit, on the 10th day of August, 1940, and in pursuance of the said order of the Court, he, the said affiant, deposited in the United States Post Office at the City of Las Vegas, County of Clark, State of Nevada, a true copy of the said summons attached a true copy of the said complaint duly certified to by the attorney for the plaintiff, enclosed in a sealed envelope, directed to Thomas George Hendrix,

the said defendant, at number 391 Fuller Street, in the City of Akron, County of Summit, State of Ohio, the place of his residence as aforesaid, and paid the postage thereon in advance; and that there is a regular communication by the United States mails from said post office of deposit thereof, as aforesaid, to said defendant's said place of residence.

George W. Thompson.

Subscribed and sworn to before me, this 10th day of August, 1940.

I. S. Thompson, Notary Public. (Seal.)

[fol. 16] IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

THOMAS GEORGE HENDRIX, Defendant.

SUMMONS

The State of Nevada sends greetings to said defendant:

You are hereby summoned to appear after the service upon you of this summons, if served in said County, or within twenty days if served out of said County but within said Judicial District, and in all other cases within thirty days (exclusive of the day of service), and defend the above entitled action.

This action is brought to recover a judgment dissolving the bonds of matrimony that now exist between you and the plaintiff on the grounds of your willful neglect of, and your extreme cruelty toward the plaintiff, all of which will more fully appear from plaintiff's verified complaint now on file in this action, to which you are referred for further particulars.

Dated this 26th day of June, A. D. 1940.

Lloyd S. Payne, Clerk of the Eighth District Court of the State of Nevada, in and for Clark County, Nevada, by Tilla Cronick, Deputy. (Seal.)

L. S. Thompson, Rooms 5 & 6 Griffith Bldg., Las Vegas, Nevada, Attorney for Plaintiff.
Aug. 7, 14th, 21st, 28th, Sept. 4th.

STATE OF NEVADA,
County of Clark, ss:

Dick Lochrie, being first duly sworn, deposes and says: That he is foreman of the Las Vegas Evening Review-Journal, a daily newspaper, of general circulation, printed and published at Las Vegas, in the County of Clark, State [fol. 17] of Nevada, and that the attached was continuously published in said newspaper for a period of five weeks from August 7, 1940, to Sept. 4th, 1940, inclusive, being the issues of said newspaper was regularly issued and circulated on each of the dates above named.

Signed: Dick Lochrie.

Subscribed and sworn before me, this 13th day of September, 1940. A. E. Cahlan, Notary Public in and for Clark County. My Commission Expires: Jan. 12, 1943. (Seal.)

Filed October 4, 1940. Lloyd S. Payne, Clerk, by Dolores Yturri, Deputy.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

THOMAS GEORGE HENDRIX, Defendant

DECREE OF DIVORCE

Filed October 4, 1940. Lloyd S. Payne, Clerk, by Helen Scott, Deputy.

The above entitled cause coming on regularly for hearing this day, in open Court, before the Honorable Roger Foley, Judge of said Court, presiding; Present Lillie Esther

Hendrix, plaintiff, in person and by her attorney, I. S. Thompson, the defendant not appearing and the Court having before it all the files, pleadings and papers in the action and being fully advised in the premises, finds that this action has been regularly commenced; and that the plaintiff is now and has been a bona fide resident of the County of Clark, State of Nevada for more than six weeks immediately preceding the commencement of this action; that the defendant has been duly and regularly served with summons in this action in the manner prescribed by law and the order of this Court: that after the order [fol. 18] was made directing the publication of the summons, the plaintiff used every effort to locate the defendant in order to serve the summons upon him personally but was unable to do so because of his dodging service; that the service of summons was made by publication in The Las Vegas Evening Review-Journal, for a period of four weeks and at least once a week during said time; and the default of the defendant has been duly entered for failure to answer plaintiff's complaint within the time allowed by law; and the defendant not having appeared for trial of said action either in person or by attorney and that the Court has complete jurisdiction of the matter both as to the subject matter and the parties to the action.

Now, therefore, after hearing the witnesses sworn and examined in open Court and the said cause having been submitted and the Court being fully advised in the premises and having fully considered all the evidence in the case, finds that all the averments contained in plaintiff's complaint are true as therein alleged; that the plaintiff, Lillie Esther Hendrix, is without fault in the premises, and is entitled to a Decree of Divorce from the defendant, Thomas George Hendrix, on the grounds of his willful neglect of and extreme cruelty toward the plaintiff.

It is, therefore, ordered, adjudged and decreed that a contract of marriage now existing between the plaintiff, Lillie Esther Hendrix, and the defendant, Thomas George Hendrix, be and the same is hereby dissolved, set aside and forever held at naught; and that the said parties are absolutely divorced and released from any and all marital obligations each to the other, and are hereby restored to the status of single persons.

Done in open Court, this 4th day of October, 1940.

Roger Foley, District Judge.

[fol. 19] In the District Court of the Eighth Judicial District of the State of Nevada in and for Clark County

No. 10651

Lillie Esther Hendrix, Plaintiff,

vs.

Thomas George Hendrix, Defendant

Judgment Roll

Filed October 8, 1940. Lloyd S. Payne, Clerk, by Tilla Cronick, Deputy.

I, the undersigned County Clerk and Ex-Officio Clerk of the District Court of the Eighth Judicial District in and for said County and State, do hereby certify that the foregoing is a true copy of the judgment entered in the above entitled action recorded in Judgment Book 11 of the said Court at pages 228-9; and I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness my hand and seal of the District Court, this 8th day of October, 1940.

Lloyd S. Payne, Clerk, by Tilla Cronick, Deputy.
(Seal.)

In the Eighth Judicial District Court of the State of Nevada in and for the County of Clark

No. 10651

Lillie Esther Hendrix, Plaintiff,

vs.

Thomas George Hendrix, Defendant

Praecipe for Default

Filed October 4, 1940. Lloyd S. Payne, Clerk, by Dolores Yturri, Deputy.

To the Clerk of the Above Entitled Court:

The defendant above named, Thomas George Hendrix, having been duly and regularly served with process herein, and having failed to appear in said action and having failed to answer or otherwise plead herein, and more than 30 days having elapsed since said service, and being in de-

fault, you are hereby requested and directed to enter the [fol. 20] default of said defendant.

Dated this 4th day of October, 1940.

I. S. Thompson, Attorney for Plaintiff.

In the Eighth Judicial District Court of the State of Nevada in and for the County of Clark

No. 10651

Lillie Esther Hendrix, Plaintiff,
vs.
Thomas George Hendrix, Defendant

Default

Filed Oct. 4, 1940. Lloyd S. Payne, Clerk, by Dolores Yturri, Deputy.

It appearing from the files and records in the above entitled action that Thomas George Hendrix, defendant herein, was duly served with summons by publication, and that more than thirty days, exclusive of the day of service, have expired since said service upon the defendant, and no answer or demurrer having been filed or other defense made by defendant, and no further time having been granted, the default of Thomas George Hendrix, defendant herein, in failing to answer or make defense to plaintiff's complaint, is hereby entered.

Witness my hand and seal of said Court, this 4th day of October, A. D., 1940.

Lloyd S. Payne, Clerk, by Dolores Yturri, Dep. Clerk.
(Seal.)

In the Eighth Judicial District Court of the State of Nevada in and for the County of Clark

No. 10651

Lillie Esther Hendrix, Plaintiff,
vs.
Thomas George Hendrix, Defendant

Affidavit as to Residence of Plaintiff

State of Nevada,
County of Clark, ss:

Lillie Roesselet, being first duly sworn, deposes and says [fol. 21] that she is and was, on all dates hereinafter men-

tioned, over the age of twenty-one years. That she is not a party to, nor has she any interest in, the above entitled action. That she resided in the State of Nevada, County of Clark, during the dates and times hereinafter mentioned. That on May 15, 1940, she was residing in and conducting the Alamo Auto Court on the highway leading from Los Angeles, California, to Las Vegas, Nevada, called the Los Angeles Highway; that on said last named date Lillie Esther Hendrix, the plaintiff above named, came there to live, rented a room and is still living there; that said Lillie Esther Hendrix was present every day, at said place, from the date she came there, May 15, 1940, up to and including June 26, 1940.

Lillie Roesselet.

Subscribed to and sworn before me, this 16th day of September, 1940. I. S. Thompson, Notary Public. (Seal.)

Plaintiff's Exhibit 1. Filed October 4, 1940. Lloyd S. Payne, Clerk, by Helen Scott, Deputy.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

THOMAS GEORGE HENDRIX, Defendant

AFFIDAVIT OF NON-MILITARY SERVICE OF DEFENDANT

Filed October 4, 1940. Lloyd S. Payne, Clerk, by Dolores Yturri, Dep.

STATE OF NEVADA,
County of Clark, ss:

LILLIE ESTHER HENDRIX, being first duly sworn, deposes and says that she is above the age of majority and is the plaintiff in the above entitled suit and the wife of Thomas

Hendrix, the defendant in the said suit, and has been such [fol. 22] for more than twenty (20) years last past; that he is above forty-five (45) years of age and not subject to draft under the laws of the United States; that she knows of her own knowledge that said Thomas C. Hendrix, defendant, is not now and has not been at any time since 1920, in the military service of the United States or in the militia of the State of North Carolina, where he has resided since 1920, or in the militia of any other State; that he is not now, nor has *he* been since said marriage to plaintiff, in the service of the United States Government in any capacity whatsoever.

Lillie Esther Hendrix.

Subscribed and sworn to before me, this 1st day of October, 1940. I. S. Thompson, Notary Public. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

vs.

THOMAS GEORGE HENDRIX, Defendant

Filed Oct. 8, 1940. Lloyd S. Payne, Clerk, by Tilla Cronick, Deputy.

Before Hon. Roger Foley, District Judge.
9:45 A. M., October 4, 1940.
J. S. Thompson, Esq., Attorney for Plaintiff.

COMPLAINT WAS FILED ON JUNE 26, 1940. AFFIDAVIT AND ORDER FOR PUBLICATION ON FILE. SUMMONS RETURNED. AFFIDAVIT OF NON-MILITARY SERVICE OF DEFENDANT ON FILE. DEFAULT ENTERED OCTOBER 4, 1940.

LILLIE ESTHER HENDRIX was called as a witness in her own behalf, and after being first duly sworn was examined by Mr. Thompson, and testified as follows:

Q. Your name is Lillie Esther Hendrix?
A. Yes.

Q. You are the plaintiff in the case?

A. Yes.

[fol. 23] Q. The defendant, Thomas George Hendrix, is your husband?

A. Yes.

Q. You were married June 27, 1920, at Icard, North Carolina?

A. Yes.

Q. Where do you reside?

A. Las Vegas, Nevada.

Q. Las Vegas, Clark County, Nevada?

A. Yes.

Q. You filed your complaint on June 26, 1940; had you resided here a full six weeks prior to that time?

A. Yes.

Q. When did you come to Clark County, Nevada?

A. May 15, 1940.

Q. What was your object and intention in coming here at that time?

A. To establish a residence.

Q. And did you establish a residence?

A. Yes.

Q. And that residence was an indefinite permanent residence?

A. Yes, sir.

Q. And from May 15, 1940, down to the day you filed your complaint, were you absent from the county or the State?

A. No, sir.

Q. You were here every day?

A. Yes, sir.

Q. Where did you reside during that time?

A. At the Alamo Court.

Q. You were there until after you filed your complaint?

A. Yes.

Q. Are there any children of this marriage?

A. No, sir.

Q. In the fourth paragraph you allege the defendant has willfully neglected for a period of over one year immediately preceding the commencement of this action to provide the plaintiff with the common necessaries of life, although having the ability to do so, and that such neglect is not and was not the result of poverty on the part of the defendant which he could not avoid by ordinary industry; is that true?

A. Yes.

[fol. 24] Q. During past year was your husband well and healthy?

A. Yes.

Q. And able to work?

A. Yes.

Q. And able to earn a living for you and he?

A. Yes.

Q. And he didn't do it?

A. Never.

Q. The sixth paragraph of the complaint alleges that during the term of said marriage the defendant has been guilty of extreme mental cruelty towards this plaintiff by his words, actions and conduct; plaintiff therefore alleges that during said married life defendant has been guilty of extreme mental cruelty towards this plaintiff; is that true?

A. Yes.

Q. Now, I will ask you what was his actions towards you when he was home; was he cheerful?

A. No.

Q. Was he moody?

A. Yes.

Q. Did he talk to you or speak to you?

A. Not often.

Q. How about you speaking to him, did he always answer you?

A. Well, most of the time it was a nod or a shake of the head.

Q. There was nothing cheerful about him at all?

A. No, there was not.

Q. Now, when the bills would come in at the end of the month or at the time they should be paid, would he pay them?

A. No, sir, he didn't.

Q. Did your mother and father often have to pay them?

A. They paid money for me.

Q. I will ask you how did these things affect you mentally, his actions in regard to failure to provide for you and these bills coming in, and his moody disposition?

A. It worried me till I didn't care whether I lived or did anything.

Q. Did it cause you great mental worry?

A. It certainly did.

[fol. 25] Q. I will ask you now if you made every effort to get personal service upon the defendant in this case?

A. Yes, I have.

Q. Now, just prior to the commencement of this suit did you have your attorney write him in regard to this matter?

A. Yes.

Q. And did you ever see that letter or a copy of the letter?

A. Yes.

Q. And in the last paragraph after reciting that you were bringing a suit, "Please indicate your willingness to sign such an appearance when it comes to you by mailing the enclosed postal card." Did you ever see the postal card that was sent in that letter?

A. Yes.

Q. Did he sign that postal card?

A. Yes, sir.

Q. And it was sent to your attorney?

A. Yes, sir.

Q. Do you know whether or not he employed an attorney in North Carolina?

A. Yes.

Q. And a letter came from the attorney?

A. Yes.

Q. Have you got their names?

A. Yes.

Q. What were their names?

A. L. M. Abernathy.

Q. Abernathy and Caldwell? Mr. Abernathy was the man. Mr. Caldwell was with him.

Q. So your husband had full knowledge of the suit?

A. Yes, he did.

Q. Just before filing your complaint you sent an appearance to him?

A. Yes.

Q. Where he lived in North Carolina?

A. Yes.

Q. And you also sent one to Akron, Ohio?

A. Yes.

Q. And one to Darby, North Carolina?

A. Yes.

[fol. 26] Q. These were the different places where he was traveling around?

A. Yes.

Q. Did you enclose any money in any of them?
A. Yes.
Q. A dollar in one and fifty cents in another?
A. Yes.
Q. And the purpose of that was to pay the notary fee?
A. Yes.
Q. Did he ever return that?
A. No.
Q. And after you had sent the papers to the sheriff, the summons to be served?
A. Yes.
Q. And the Sheriff couldn't find him?
A. No.

O. B. WILLIAMS was called as a witness on behalf of the plaintiff, and after being first duly sworn was examined by Mr. Thompson, and testified as follows:

Q. Will you give your name to the reporter?
A. O. B. Williams.
Q. Where do you live?
A. Clark County, Nevada.
Q. Do you know the plaintiff in this action?
A. Yes, sir.
Q. Do you know whether or not she has resided here a full six weeks prior to the commencement of this action?
A. She testified that she came here——

The Court: I wish the witness be asked whether he knows of his own knowledge of the date.

By Mr. Thompson:

Q. Where were you living on the 15th day of May, 1940?
A. At the Alamo Court, Las Vegas.
Q. When did you first see her at that Court?
A. May 15, 1940.
Q. So that she lived there at that Alamo Court until the day she filed her complaint?
A. Yes, sir.
[fol. 27] Q. You saw her every day?
A. Yes, sir.

The Court: That's just the thing I wanted to avoid. I don't want the witness led in regard to date of residence.

Q. Have you any independent recollection of that, or was it suggested to you by counsel?

A. No, I know the date.

Q. Did you make any record of it?

A. (No response).

By Mr. Thompson (to plaintiff):

Q. I will ask you if the lady that runs the Alamo Court is here now?

A. No, she is not.

Q. Where did she go?

A. To California.

Q. I will ask you who was the lady who rented the place?

A. Mrs. Lillie Rosetti.

Mr. Thompson: I will offer in addition to Mr. Williams' testimony the affidavit of Lillie Rosetti, who rented the place, and who is absent from the place.

The Court: It may be admitted in connection with the testimony of the witness.

Q. You are satisfied you first met the lady on the date you testified?

A. Yes.

The Court: Decree to the plaintiff dissolving the marriage between the parties.

REPORTER'S CERTIFICATE

I hereby certify that the foregoing is a full, true and correct transcript of my shorthand notes taken in said action.

Marguerite Byler, Court Reporter.

CLERK'S CERTIFICATE

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, the duly elected, qualified and acting County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial

[fol. 28] District of the State of Nevada, in and for the County of Clark, do hereby certify and attest the foregoing to be a full, true and correct copy of the original:

Complaint, Affidavit for Publication of Summons, Order Directing Publication of Summons, Summons, Affidavit of Mailing Copy of Summons and Complaint, Affidavit of Publication, Decree of Divorce, Judgment Roll, Praecipe for Default, Default, Affidavit as to Residence of Plaintiff, Affidavit of Non-Military Service as to Defendant, Reporter's Transcript in the case entitled: Lillie Esther Hendrix, Plaintiff, vs. Thomas George Hendrix, Defendant. #10651. Together with the endorsements thereon, now on file in my office, and that I have carefully compared the same with the original.

In witness whereof, I have hereunto set my hand and affixed the Seal of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, this 23rd day of November, 1940.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

JUDGE'S CERTIFICATE TO CLERK

STATE OF NEVADA,
County of Clark, ss:

I, Roger Foley, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify that Lloyd S. Payne is County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said Lloyd S. Payne, as such officer; that the seal thereto is the seal of said District Court; that said Lloyd S. Payne as such Clerk is the proper officer to execute the said certificate of attesta-
[fol. 29] tion, and that such attestation is in due form according to the laws of the State of Nevada.

In witness whereof, I have hereunto set my hand and in my official character as such Judge, at the City of Las Vegas, County and State aforesaid, this 23rd day of November, A. D. 1940.

Roger Foley, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark.

CLERK'S CERTIFICATE TO JUDGE

STATE OF NEVADA,
County of Clark, ss:.

I, Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a court of record, having a seal, which is annexed hereto), do hereby certify that Roger Foley, whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the District Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In witness whereof, I have hereunto set my hand and annexed the Seal of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, this 23rd day of November, 1940.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

[fol. 30] DEFENDANTS' EXHIBIT NO. 2

(Exemplified copy of the divorce proceedings in the Eighth Judicial Court of the State of Nevada, in and for Clark County, and that certain action entitled: Otis Baxter Williams v. Carrie Ora Williams):

IN THE EIGHTH JUDICIAL COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

vs.

CARRIE ORA WILLIAMS, Defendant

Filed June 26th, 1940. Lloyd S. Payne, Clerk, by Tilla Cronick, Deputy.

COMPLAINT

The plaintiff complains of the defendant and for cause of action alleges:

1. That in the month of November, 1916, in Granite Falls, State of North Carolina, the plaintiff and the defendant intermarried and ever since have been, and are now, husband and wife.

2. That the plaintiff is now and has been a resident of the State of Nevada for the period of more than six weeks immediately preceding the commencement of this action.

That for more than six weeks immediately preceding the commencement of this action he has been, and is now, a resident of the County of Clark, State of Nevada.

3. That during the term of said marriage the defendant has been guilty of extreme cruelty toward this plaintiff, by her words, actions and conduct;

And plaintiff, therefore, alleges that during the term of said married life the defendant has been guilty of extreme cruelty toward this plaintiff.

Wherefore, plaintiff prays judgment against the defendant dissolving the bonds of matrimony now existing between the plaintiff and the defendant, and restoring said parties [fol. 21] to the status of single persons.

I. S. Thompson, Attorney for Plaintiff.

STATE OF NEVADA,
County of Clark, ss:

Otis Baxter Williams, being first duly sworn, deposes and says: That he is the plaintiff in the above entitled ac-

tion, and that he has read his foregoing complaint and knows the contents thereof and that the same is true of his own knowledge.

Otis Baxter Williams.

Subscribed and sworn to before me, this 26th day of June, 1940. I. S. Thompson, Notary Public. (Seal.)

IN THE EIGHTH JUDICIAL COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

vs.

CARRIE ORA WILLIAMS, Defendant

AFFIDAVIT FOR PUBLICATION OF SUMMONS

Endorsed: Filed July 18, 1940. Lloyd S. Payne, Clerk, by Helen Scott, Deputy.

STATE OF NEVADA,
County of Clark, ss:

Otis Baxter Williams, being first duly sworn, deposes and says: That he is the plaintiff in the above entitled suit; that the complaint in said action has been filed with the Clerk of the above Court and summons thereupon issued; that said action is brought to recover a judgment of the above Court, dissolving the bonds of matrimony now existing between the plaintiff and the defendant, on the grounds of extreme cruelty; that such cause of action is more fully set forth in plaintiff's verified complaint on file herein, to which you are referred to for further particulars, and which is hereby made a part of this affidavit; [fol. 32] that the defendant is a necessary and proper party defendant in this action.

That the defendant, Carrie Ora Williams, resides outside of the State of Nevada, to-wit, at Granite Falls, North Carolina, and that she is not now and cannot be found in the State of Nevada, and that defendant's place of residence is Granite Falls, North Carolina.

Affiant, therefore, says that personal service of the summons in this action cannot be made upon the defendant, Carrie Ora Williams, and prays for an order that service of the same be made by publication thereof.

Otis Baxter Williams.

Subscribed and sworn to before me, this 16th day of July, 1940. I. S. Thompson, Notary Public. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

vs.

CARRIE ORA WILLIAMS, Defendant

Endorsed: Filed July 18, 1940. Lloyd S. Payne, Clerk, by Helen Scott, Deputy.

ORDER DIRECTING PUBLICATION OF SUMMONS

Upon reading and filing the affidavit of Otis Baxter Williams, the plaintiff above named, and it satisfactorily appearing therefrom that the defendant, Carrie Ora Williams, resides out of the State of Nevada and at Granite Falls, North Carolina; And it also appearing from the complaint herein duly verified by the plaintiff that good causes of action exist in this action in favor of the plaintiff, Otis Baxter Williams, and against the defendant, Carrie Ora Williams, and that the defendant, Carrie Ora Williams, is a necessary and proper party defendant thereto; And it further appearing that a summons has been issued out of [fol. 33] said Court in this cause and that personal service of the same cannot be made upon the defendant, Carrie Ora Williams, for the reasons hereinbefore contained and by the said affidavit made to appear.

On motion of I. S. Thompson, attorney for plaintiff, it is ordered that the service of the summons in this action be made upon the defendant, Carrie Ora Williams, by publication thereof in the Las Vegas Evening Review-

Journal, a newspaper published in the city of Las Vegas, County of Clark, State of Nevada, hereby designated as the newspaper most likely to give notice to said defendant; that said publication be made for a period of four weeks, and at least once a week during said time.

And it further in like manner satisfactorily appearing to me that the residence of said defendant is known to be at Granite Falls, North Carolina, and her post office address is Route 1, Granite Falls, North Carolina; It is ordered and directed that a copy of the summons and complaint in this suit be deposited in the United States Post Office at the city of Las Vegas, County of Clark, State of Nevada, postpaid, directed to said defendant at his said post office address.

Dated this 18th day of July, 1940.

Roger Foley, District Judge.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

vs.

CARRIE ORA WILLIAMS, Defendant

SUMMONS

Returned and filed Aug. 22, 1940. Lloyd S. Payne, Clerk. Dolores Yturri, Deputy.

The State of Nevada sends greetings to said Defendant:

[fol. 34] You are hereby summoned to appear within ten days after the day of the service upon you of this summons if served in said County, or within twenty days if served out of said County but within said Judicial District, and in all other cases within thirty days (exclusive of the day of service), and defend the above entitled action.

This action is brought to recover a judgment dissolving the bonds of matrimony that now exist between you and the plaintiff on the grounds of your extreme cruelty toward plaintiff, all of which will more fully appear from plaintiff's

verified complaint now on file in this action to which you are referred for further particulars.

Dated this 26th day of June, 1940, A. D.

Lloyd S. Payne, Clerk of the Eighth Judicial District Court of the State of Nevada, in and for Clark County, Nevada, by Tilla Cronick, Deputy. (Seal.)

I. S. Thompson, Attorney for Plaintiff, Rooms 5 & 6 Griffith Bldg., Las Vegas, Nevada.

Sheriff's Return

STATE OF NEVADA,
County of Clark, ss:

I, J. F. Parlier, the duly elected, qualified and acting Sheriff of said County and State, do hereby certify and return that I received the within summons on the 18th day of July, A. D., 1940, and that I personally served the same upon the within named defendant, Mrs. O. B. Williams, on the 22nd day of July, A. D. 1940, at Granite Falls, County of Caldwell, North Carolina, by then and there delivering to her, the said defendant, personally, a copy of said summons attached to a certified copy of the complaint in the within entitled action.

Dated this 22nd day of July, A. D. 1940.

J. F. Parlier, Sheriff Caldwell County, State of North Carolina.

[fol. 35] STATE OF NORTH CAROLINA,
County of Caldwell, ss:

J. F. Parlier, being first duly sworn, deposes and says: That he is and was on the day when he served the within summons a citizen of the United States over the age of twenty-one years, and is not a party to, attorney in, nor has he any interest in the within entitled action; That he personally served the said summons upon Carrie Ora Williams, the within named defendant, on the 22 day of July, 1940, by delivering to said defendant, on said last named day personally, in the County of Caldwell, State of North Carolina, a copy of said summons attached to a true copy of the complaint in the within entitled action, duly certified to by the attorney for the plaintiff therein.

J. F. Parlier.

Subscribed and sworn to before me, this 22nd day of July, 1940. F. H. Hoover, C. S. C. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

vs.

CARRIE ORA WILLIAMS, Defendant

DECREE OF DIVORCE

Endorsed: Filed August 26, 1940. Lloyd S. Payne, Clerk, by Sonya Worthy, Deputy.

The above entitled cause coming on to be heard this day in open Court, before the Honorable Roger Foley, Judge presiding in said court; Present Otis Baxter Williams, in person and by his attorney, I. S. Thompson, and the Court having before it all the files, pleadings and papers in this action and being fully advised in the premises and fully satisfied that this action has been regularly commenced; Finds that the plaintiff has been and now is a bona fide and continuous resident of the County of Clark, State of Nevada, and had been such resident for more than [Fol. 36] six weeks immediately preceding the commencement of this action in the manner prescribed by law; That an order was made directing the publication of the summons in this case and that thereafter, and on the 22nd day of July, 1940, the defendant was personally served with summons in the County of Caldwell, State of North Carolina; And that defendant's default has been entered for her failure to appear and answer plaintiff's complaint within the time allowed by law; And that defendant not having appeared for trial in said action, either in person or by attorney; That the Court has complete jurisdiction in the premises, both as to subject matter and to the parties to this action.

Now, Therefore, after hearing the witnesses sworn and examined in open court, and the said cause having been submitted and the Court being fully advised in the premises and the Court having fully considered all the evidence in the case, finds that all the averments and allegations contained in plaintiff's complaint are true as therein alleged;

That the plaintiff, Otis Baxter Williams, is without fault in the premises and is entitled to a Decree of Divorce from the defendant, Carrie Ora Williams, on the ground of extreme cruelty toward the plaintiff.

It is, Therefore, Ordered, Adjudged and Decreed that the bonds of matrimony now existing between the plaintiff and the defendant be, and the same are hereby dissolved, set aside and forever held naught; And the said parties are absolutely divorced and released from any and all marital obligations each to the other and are hereby restored to the status of single persons.

Done in open Court, this 26th day of August, 1940.

Roger Foley, District Judge.

[fol. 37] In the District Court of the Eighth Judicial District of the State of Nevada in and for Clark County

No. 10650

Otis Baxter Williams, Plaintiff,

vs.

Carrie Ora Williams, Defendant

Judgment Roll

Filed Aug. 28, 1940. Lloyd S. Payne, Clerk, by Sonya Worthy, Deputy.

I, the undersigned County Clerk and Ex-Officio Clerk of the District Court of the Eighth Judicial District in and for said County and State, do hereby certify that the foregoing is a true copy of the Judgment entered in the above entitled action recorded in Judgment Book 11 of said Court, at page 172; and I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness my hand and seal of the District Court, this 11th day of August, 1940.

Lloyd S. Payne, Clerk, by Sonya Worthy, Deputy.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

vs.

CARRIE ORA WILLIAMS, Defendant

PRAECIPE FOR DEFAULT

Filed Aug. 22, 1940. Lloyd S. Payne, Clerk, by Dolores Yturri, Deputy.

To the Clerk of the Above Entitled Court:

The defendant above named, Carrie Ora Williams, having been regularly served with process herein, and having failed to appear in said action and having failed to answer or otherwise plead herein, and more than 30 days having elapsed since said service, and being in default, you are [fol. 38] hereby requested and directed to enter the default of said defendant.

Dated this 22nd day of August, 1940.

I. S. Thompson, Attorney for Plaintiff.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

vs.

CARRIE ORA WILLIAMS, Defendant

DEFAULT

Filed August 22, 1940. Lloyd S. Payne, Clerk, by Dolores Yturri, Deputy.

It appearing from the files and records in the above entitled action that Carrie Ora Williams, defendant herein, was duly served with Summons on the 22nd day of July, A. D. 1940, at the County of Caldwell, State of North Carolina, and that more than 30 days, exclusive of the day of service, have expired since said service upon the defendant, and no answer or demurrer having been filed or other defense made by defendant, and no further time having been granted the default of Carrie Ora Williams,

defendant herein, failing to answer or make defense to plaintiff's complaint, is hereby entered.

Witness my hand and seal of said Court, this 22nd day of August, 1940.

Lloyd S. Payne, Clerk, by Dolores Yturri, Deputy Clerk. (Seal.)

CLERK'S CERTIFICATE

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, the duly elected, qualified and acting County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify and attest the foregoing to be a full, true and correct copy of the original: [fol. 39] Complaint, Affidavit for Publication of Summons, Order Directing Publication of Summons, Summons, Decree of Divorce, Judgment Roll, Praecipe for Default and Default, together with the endorsements thereon, now on file in my office, and that I have carefully compared the same with the original.

In witness whereof, I have hereunto set my hand and annexed the seal of the District Court of the Eighth Judicial District of the State of Nevada in and for the County of Clark, this 12th day of November, 1940.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District, in and for the County of Clark. (Seal.)

JUDGE'S CERTIFICATE TO CLERK

STATE OF NEVADA,
County of Clark, ss:

I, Roger Foley, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify that Lloyd S. Payne is County Clerk of the County of Clark, State of Nevada,

and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of Lloyd S. Payne, as such officer; that the seal annexed thereto is the seal of said District Court; that said Lloyd S. Payne, as such Clerk, is the proper officer to execute the said certificate of attestation, and that such attestation is in due form according to the laws of the State of Nevada.

In witness whereof, I have hereunto set my hand and in my official character as such Judge, at the City of Las Vegas, County and State aforesaid, this 12th day of Novem-
[fol. 40] ber, A. D., 1940.

Roger Foley, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark.

CLERK'S CERTIFICATE TO JUDGE

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which court is a court of Record, having a seal, which is annexed hereto), do hereby certify that Roger Foley, whose name is subscribed to the foregoing certificate of due attestation was; at the time of signing the same, Judge of the District Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of attestation is genuine.

In witness whereof, I have hereunto set my hand and annexed the seal of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, this 12th day of November, 1940.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the State of Nevada, in and for the County of Clark. (Seal.)

DEFENDANT'S EXHIBIT NO. 1

Addressee side:

I. S. Thompson
Attorney-at-Law
Rooms 5 & 6 Griffith Bldg.
Las Vegas,
Nevada.

[fol. 41] Reverse side:

Dear Sir:

Upon receipt of the original appearance, I will sign the same.

Signed: Thomas Hendrix.

Defendants Rest.

ORDER DENYING MOTION FOR NONSUIT

At the close of all the evidence the defendants and each of them renew their motion for judgment as of nonsuit. Motion overruled as to each defendant, and the defendants and each of them except.

Exception No. 4.

IN SUPERIOR COURT OF CALDWELL COUNTY

JUDGE'S CHARGE TO JURY

Gentlemen of the jury: O. B. Williams and Lillie Shaver Hendrix are indicted in a bill of indictment charging them with having unlawfully, wilfully and feloniously married, alleging that they were married to each other in the City of Las Vegas in the State of Nevada, and thereafter returned to the State of North Carolina and did live together and cohabit together in the said State of North Carolina and in Caldwell County, the said O. B. Williams having a living wife, one Mrs. O. B. Williams, living in Caldwell County, North Carolina, at the time of said marriage to Lillie Shaver Hendrix and the said Lillie Shaver Hendrix having a living husband, one Tom Hendrix,

living in Caldwell County, North Carolina, at the time of her marriage to the said O. B. Williams.

Gentlemen of the jury, I shall not recapitulate the testimony, without objection. You gentlemen are the sole tryers of the facts that you will render your verdict upon the testimony and the evidence that has been offered, and upon your recollection as to what that testimony and that evidence is. The testimony is the spoken words of the witnesses. The evidence is the documentary matter offered into the record into the Court.

If counsel for the State or for the defendant, or if the Court should misquote any part of the testimony, you will [fol. 42] ignore that and rely upon your own recollection of the facts before you.

The State of North Carolina contends, and the defendants have offered documentary evidence into the record to the effect that the defendants obtained a decree in a court in the State of Nevada, which decree the State contends, insofar as it permits or authorizes the defendants to live together as man and wife in the State of North Carolina, is void; whereas the defendants contend that it is a valid divorce, not alone in the State of Nevada, but likewise in the State of North Carolina.

(A) The State contends that these defendants each has a spouse living in the State of North Carolina. That the male defendant has a wife living, and had at the time of the second marriage or purported marriage contract. That the feme defendant, the female defendant, had at that time a living husband in the State of North Carolina. That no service was had upon either of them that in law was binding upon the persons residing in Caldwell County, North Carolina, that is, Mrs. O. B. Williams and Mr. Hendrix. That neither of these persons, to-wit, Mrs. Williams and Mr. Hendrix, personally or by attorney, made any appearance in the courts of Nevada and, therefore, the entire proceedings in the State of Nevada was void. That they went to the State of Nevada not to establish a bona fide residence, but solely for the purpose of taking advantage of the laws of that State and obtain a divorce through fraud upon that court. (B)

The defendants and each of them object and except to that portion of charge embraced within the letters (A) to (B).

Exception No. 5.

The burden is upon the State to satisfy you beyond a reasonable doubt as to the guilt of each defendant. You may convict one or both. When the Court instructs you that the burden is upon the State to satisfy you beyond a [fol. 43] reasonable doubt as to the defendants' guilt it does not mean to imply that your minds must be relieved of every whimsical, fanciful or imaginary doubt. It means exactly what that plain language says, that your minds must be made up to a moral certainty that O. B. Williams is guilty and that Mrs. Hendrix is guilty, and if you have a reasonable doubt as to either or both defendants, return for your verdict Not Guilty as to such defendant or defendants as to whose guilt you may have a reasonable doubt.

The defendants, under the laws of this State are presumed to be innocent. Every defendant is presumed to be innocent. The character evidence offered in behalf of the defendants is substantive evidence going directly to their guilt or innocence. They have elected not to go upon the witness stand, and there being no burden of proof upon them to show their innocence, but on the contrary upon the State to show beyond a reasonable doubt that they or either of them are guilty, the Court instructs you, as the law requires it to do, that you cannot and shall not consider that to their prejudice.

The defendants and each of them insists that upon a consideration of all of the facts that you should have a reasonable doubt as to their guilt and return for each of them a verdict of not guilty.

The defendants and each of them contend and insist that from the evidence that has been offered in its entirety, that you cannot find beyond a reasonable doubt that there has been cohabitation between the male and the female defendants.

Upon that point the State of North Carolina insists that their relationship as evidenced by the testimony offered on behalf of the State details a set of circumstances which you should accept as facts beyond a reasonable doubt, [fol. 44] and that you should conclude from that testimony that this male defendant and this female defendant not alone have lived together, gone to church together, gone to the store together and visited their neighbors together,

but they have lived together in the same house, in the relationship of man and wife, involving all of its marital rights, claims, obligations and physical and sexual contacts. The defendants insist that there is no evidence from which you should so conclude beyond a reasonable doubt.

The defendants insist they are people of good character and, being people of good character, would not commit a crime that in law amounts to a felony. That, being of good character, they are less likely to commit a crime than people of bad character.

The defendants insist that there was service as indicated by the evidence offered, which in law constitutes an appearance on behalf of the defendants and each of them, and gave jurisdiction to the Court in the State of Nevada, and with respect to the law involved regarding that subject, the Court will later instruct you.

From all of the evidence the defendants and each of them contend and insist that you should have a reasonable doubt, bearing in mind their presumption of innocence, and should for your verdict render one as to each of them of Not Guilty.

(C) Gentlemen of the jury, the Court charges you as a matter of law that service by publication in the State of Nevada, as indicated by the documentary evidence, does not give to the State of Nevada jurisdiction to grant a divorce to a married person that would authorize and validate a second marriage in the State of North Carolina. (D)

Defendants and each of them object and except to that portion of the Court's charge embraced within the letters (C) to (D).

Exception No. 6.

[fol. 45] (E) I read to you the following syllabus from Book 203, North Carolina Reports, reading verbatim from Syllabus 3, at page 533: "Divorce of another State based upon service by publication on resident of this State is not valid here." (F)

The defendants and each of them object and except to that portion of charge embraced within the letters (E) to (F).

Exception No. 7.

(G) "Where a husband domiciled in another State obtains a decree of absolute divorce from his wife domiciled in

this State in which proceeding the wife is served with summons by publication in accordance with the laws of such other State (that is, by putting in the newspaper notifying the defendant and the public that an application is made, is being made for divorce), and in which the wife does not appear in person or by attorney, the decree of divorce based upon such service is not valid in this State." And in the instant case the State of North Carolina alleges and insists that neither the wife of the male defendant here in North Carolina, nor the husband of the female defendant, made a personal appearance in that court, nor did they, the State insists, make any appearance by attorney or have anyone to represent them, or make any appearance otherwise. (H)

The defendants and each of them object and except to that portion of charge embraced within the letters (G) to (H).

Exception No. 8.

"And an attempted second marriage of the wife will be declared void in an action brought by the husband of the second attempted marriage. The distinction is noted where both the parties are residents of such other States and its Courts have jurisdiction of both parties."

(I) I have read this verbatim, Syllabus 3 from Pridgen v. Pridgen, in 203 N. C. Reports, which is directly upon the subject. The case was tried by Judge Barnhill, at present [fol. 46] an Associate Justice of the Supreme Court of North Carolina, at that time a Superior Court Judge, and, incidentally, one of the greatest lawyers that this State has ever produced. The opinion is written by Judge Adams, another grand lawyer who has since gone to his reward. (J)

The defendants and each of them object and except to that portion of charge embraced within the letters (I) to (J).

Exception No. 9.

The syllabus needs no paraphrasing. It speaks for itself and I have read it verbatim from page 533.

(K) The defendants offered a card in evidence, and with respect to that card the Court charges you, gentlemen of the jury, that the card indicated or agreed to do certain things, but the card within itself, in law, does not constitute a

personal appearance. If the husband of Mrs. Hendrix had done what the card purports that he would do if the papers were sent to him, that would have constituted a personal appearance, but my promising to make a personal appearance by attorney does not constitute one. It takes more than that. Suppose I want to make an appearance in the State of Nevada. I may authorize it in writing or by attorney—some one get up and appear for me. The State insists that was not done in this case and the defendants that it was. It takes more than a promise to make an appearance or accept service or to constitute service. There must be a carrying out of that promise. (L)

The defendants and each of them object and except to the portion of charge embraced within the letters (K) to (L).

Exception No. 10.

The State contends there was no such consummation or carrying out of the promise with respect to Mrs. Hendrix' husband. That these defendants recognized only the publication and did not themselves rely upon the signing of this card purporting to agree to do something in the future if [fol. 47] the papers —sent him, and the State contends that they were never served nor accepted.

All of this is subject matter for you to consider upon the question of guilt or innocence.

(M) The Court says as follows: "The decree of divorce based upon service is not valid in this State, and an attempted second marriage of the wife will be declared void in an action brought by the husband of the second attempted marriage." (N)

The defendants and each of them object and except to that portion of charge embraced within the letters (M) and (N).

Exception No. 11.

Then it notes the distinction where both parties are residents of the same State. That does not concern you here, because one of the parties was a resident of this State in this case and the other Nevada, and the question is whether or not their marriage in the State of Nevada is valid in the State of North Carolina under the facts and the law in this State, and if it is valid, then these defendants cannot

be held to be guilty of bigamous cohabitation, because if they were lawfully married as they contend and insist they were, and that marriage was with jurisdiction sufficient to make it valid in North Carolina, then they have the legal right to live together as man and wife and cohabit and perform all of the other marital rights without hindrance on the part of the law.

(O) The State insists under the facts and the law that they have no such right. That in truth and in fact they are not legally man and wife, and that they have been conducting themselves and living as such, and asks you so to find beyond a reasonable doubt. (P)

The defendants and each of them object and except to the portion of charge embraced within the letters (O) to (P).

Exception No. 12.

[fol. 48] (Q.) Before I forget it I want to call your attention to the alleged service by the Sheriff of Caldwell County upon Mrs. Williams. The defendants insist that she was served with process. To make you a party defendant to a lawsuit started and instituted for a divorce in this Court, the Superior Court of Caldwell County, a complaint is filed in the office of the Clerk of the Superior Court, a summons, a document in writing indicating upon its face what it is, is attached thereto, signed by the Clerk of the Superior Court, given to the Sheriff or his deputy or constable, an officer clothed with the power of serving process. This is taken and served upon the defendant, and until that is done or the defendant voluntarily comes into Court in person or by attorney, the Court has no jurisdiction of that defendant. That is, here in North Carolina. No man can come into this Court and prepare a complaint and proceed to obtain a judgment of the Court upon it without serving such process upon the defendant, and it properly served as the law provides, because it involves the rights, liberties and privileges of the State citizenship. (R)

The defendants and each of them object and except to that portion of the charge embraced within the letters (Q) to (R).

Exception No. 13.

The defendants contend that under the direction and authority of the Court in the State of Nevada, a copy of the

complaint, the proceedings in question were filed or supplied to the Sheriff (there is no evidence whether they were mailed or not), but supplied or furnished the sheriff of this county, and that the sheriff of this county served upon Mrs. Williams. The defendants insist that was valid and lawful service, and the State contends to the contrary.

(S) Whereupon, the Court charges you as a matter of law that the purported or attempted service of the Sheriff of Caldwell County upon the defendant's wife, Mrs. Wil- [fol. 49] liams, of the pleadings and papers to this State from the State of Nevada had no effect in law, because the Sheriff has no authority to serve them, and the fact that he did so amounted to nullity, which means nothing. Therefore, she was not brought into the State of Nevada by virtue of the attempted service, and the Court so instructs you. (T)

The defendants and each of them object and except to that portion of charge embraced within the letters (S) to (T).

Exception No. 14.

(U) Our Supreme Court says, in State v. Herron, 175 N. C., page 754, Syllabus 3: Where a decree of divorce in another State is solely relied on as a defense on a trial for bigamy which is attacked by the State for insufficient residence in such other State, with supporting evidence, the defendant must satisfy the jury of the bona fide of his residence for the required time, but not beyond a reasonable doubt, and the same would apply as to bigamous cohabitation and assumption of the marital relation between a man and a woman who are themselves married at the time, and if they so associate themselves together under a contract alleged to be a marital contract in some foreign State being relied upon for divorce, that Court must have had the requisite jurisdiction to grant the divorce or divorces in question. (V)

The defendants and each of them object and except to that portion of charge embraced within the letters (U) to (V).

Exception No. 15.

I will read that again. (Here the Court again reads from 175 N. C., page 754, Syllabus 3). In other words, he is not

called upon to satisfy the jury beyond a reasonable doubt, nor by the greater weight of the evidence, but to satisfy the minds of the jury.

Gentlemen, I want to read for you Consolidated Statutes 4342. I will read it all for your benefit:

[fol. 50] If any person being married shall marry any other person during the life of the former husband or wife, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of a felony, and shall be imprisoned in the State's prison or county jail for a term not less than four months nor more than ten years. Any such offender may be dealt with, tried, determined and punished in the county where the offender shall be apprehended, or be in custody, as if the offense had been actually committed in that county. If any person, being married, shall contract a marriage with any other person outside of this State, which marriage shall be punishable as bigamous if contracted in this State, he shall be guilty of a felony and shall be punished as in cases of bigamy. I stop here, gentlemen, to observe that the charge here is that the defendants cohabited in the State of North Carolina, and as to that, if they did and you so find beyond a reasonable doubt that they did cohabit within the State of North Carolina, it is immaterial whether it was in Avery County or Caldwell County, if they did it at all, and you so find beyond a reasonable doubt.

Nothing contained in this section shall extend to any person marrying a second time, whose husband and wife shall have been continuously absent from such person for the space of seven years then last past, and shall not have been known by such person to have been living within that time (that does not apply, but I will read all that paragraph); "nor to any person who at the time of such second marriage shall have been lawfully divorced from the bond of the first marriage; nor to any person whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction."

So that raises the question I am submitting to you for you to decide. Under all of the evidence the State contends and insists that you should return a verdict of guilty as to [fol. 51] both defendants, and the defendants and each of them contends and insists that your verdict as to each of them should be not guilty. The State contends and insists

that under all of the evidence and the law in the case, that your verdict should be guilty as to both defendants.

You will try this case without bias and without the prejudice and without considering the result of your verdict. Something has been said to you about punishment. That is none of your concern. That is a burden that devolves upon the Court. You will pass upon the facts and say whether the defendants are guilty or not guilty, in the light of the instructions given to you by the Court and the law as given to you by the Court, and the facts as you find them to be, without regard to the consequences thereof.

You may retire and make up your verdict.

IN SUPERIOR COURT OF CALDWELL COUNTY

VERDICT

Verdict of guilty by the jury as to each defendant.

IN SUPERIOR COURT OF CALDWELL COUNTY

JUDGMENT

Upon the verdict as rendered by the jury, the judgment of the Court as to the male defendant, O. B. Williams, is that the said male defendant be confined in the State Prison at Raleigh, North Carolina, for not less than three nor more than ten years, and be assigned to hard labor as provided by law.

As to the female defendant, Lillie Shaver Hendrix, the judgment of the Court is that she be confined in the State Prison at Raleigh, North Carolina, for not less than three nor more than five years and assigned to perform such labor as provided for women prisoners by law.

IN SUPERIOR COURT OF CALDWELL COUNTY

APPEAL ENTRIES

Upon the coming in of the verdict the defendants and each of them, in apt time, move the Court to set the verdict

aside as being against the greater weight of the evidence [fol. 52] and the law in the case, and for errors assigned and to be assigned. Motion denied in each case as to each defendant, and the defendants and each of them except.

To the judgment the defendants and each of them except in open Court and appeal to the Supreme Court of North Carolina. Notice of appeal given in open Court. Further notice waived.

The defendants, appellants, shall be allowed 60 days in which to make up and serve statement of case on appeal upon the State's counsel, and the State's counsel shall be allowed 60 days after the service of the case in which to serve counter-case or file exceptions. Appeal bond in each case is fixed by the Court at $150.00. Appearance bond in each case is fixed at $2500.00, to be justified and approved by the Sheriff of Caldwell County.

IN SUPERIOR COURT OF CALDWELL COUNTY

GROUPING OF EXCEPTIONS AND ASSIGNMENTS OF ERROR

1. The defendants and each of them assign as error the following question and answer:

Q. Do you know whether they are living together and have been living together for sometime in Pineola as husband and wife?

A. Yes.

As shown by Exception No. 1 (R. p. 8).

2. The defendants and each of them assign as error the question and answer as follows:

Q. Have they?

A. Yes.

As shown by Exception No. 2 (R. p. 8).

3. The defendants and each of them assign as error the Court's failure to allow the defendants' motions for judgment of nonsuit at the close of the State's evidence, as follows:

At the close of the State's evidence the defendants and each of them move for judgment of nonsuit. Motion de-

nied as to each defendant and the defendants and each of them except.

As shown by Exception No. 3 (R. p. 9).

[fol. 53] 4. The defendants and each of them assign as error the refusal of the Court to allow their motions for judgment as of nonsuit at the close of all the evidence, as follows:

At the close of all the evidence the defendants and each of them renew the motion for judgment as of nonsuit. Motion overruled as to each defendant, and the defendants and each of them except.

As shown by Exception No. 4 (R. p. 41).

5. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (A) to (B), which is as follows:

(A) The State contends that these defendants each has a spouse living in the State of North Carolina. That the male defendant has a wife living, and had at the time of the second attempted marriage or purported marriage contract. That the feme defendant, the female defendant, had at that time a living husband in the State of North Carolina. That no service was had upon either of them that in law was binding upon the persons residing in Caldwell County, North Carolina, that is, Mrs. O. B. Williams and Mr. Hendrix. That neither of these persons, to-wit, Mrs. Williams and Mr. Hendrix, personally or by attorney, made any appearance in the Courts of Nevada, and, therefore, the entire proceedings in the State of Nevada was void. That they went to the State of Nevada not to establish a bona fide residence, but solely for the purpose of taking advantage of the laws of that State and obtain a divorce through fraud upon that Court. (B)

As shown by Exception No. 5 (R. p. 42).

6. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (C) to (D), which is as follows:

(C) Gentlemen of the jury, the Court charges you as a matter of law that service by publication in the State of [fol. 54] Nevada, as indicated by the documentary evidence,

does not give to the State of Nevada jurisdiction to grant a divorce to a married person that would authorize and validate a second marriage in the State of North Carolina. (D)

As shown by Exception No. 6 (R. p. 44).

7. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (E) to (F), which is as follows:

(E) I read to you the following syllabus from Book 203, N. C. Reports, reading verbatim from Syllabus 3, page 533: "Divorce of another State based upon service by publication on residents of this State is not valid here. (F)

As shown by Exception No. 7 (R. p. 45).

8. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (G) to (H), which is as follows:

(G) Where the husband domiciled in another State obtains a decree of absolute divorce from his wife domiciled in this State in which proceeding the wife is served with summons by publication in accordance with the laws of such other State (that is, by putting in the newspaper notifying the defendant and the public that application is made, is being made for divorce), and in which the wife does not appear in person or by attorney, the decree of divorce based upon such service is not valid in this State. And in the instant case the State of North Carolina alleges and insists that neither the wife of the male defendant here in North Carolina, nor the husband of the female defendant, made a personal appearance in that Court, nor did they, the State insists, make any appearance by attorney or have anyone to represent them, or make any appearance otherwise. (H)

As shown by Exception No. 8 (R. p. 45).

9. The defendants and each of them assign as error that [fol. 55] portion of the Court's charge embraced within the letters (I) to (J), which is as follows:

(I) I have read this verbatim, Syllabus 3 from Pridgen v. Pridgen, in 203 N. C. Reports, which is directly upon the subject. This case was tried by Judge Barnhill, at

present an Associate Justice of the Supreme Court of North Carolina, at that time a Superior Court Judge, and incidentally one of the greatest lawyers that this State has ever produced. The opinion is written by Judge Adams, another great lawyer who has since gone to his reward. (J)

As shown by Exception No. 9 (R. pp. 45-46).

10. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (K) to (L), which is as follows:

(K) The defendants offered a card as evidence, and with respect to that card the Court charges you, gentlemen of the jury, that the card indicated or agreed to do certain things, but the card within itself, in law, does not constitute a personal appearance. If the husband of Mrs. Hendrix had done what the card purports that he would do if the papers were sent to him, that would have constituted a personal appearance, but my promising to make a personal appearance by attorney does not constitute one. It takes more than that. Suppose I want to make an appearance in the State of Nevada. I may authorize it in writing or by attorney—some one get up and appear for me. The State insists that it was not done in this case and the defendants that it was. It takes more than a promise to make an appearance or accept service or to constitute service. There must be a carrying out of that promise. (L)

As shown by Exception No. 10 (R. p. 46).

11. The defendants and each of them assign as error that portion of charge embraced within the letters (M) to (N), which is as follows:

[fol. 56] (M) The Court says as follows: "The decree of divorce based upon such service is not valid in this State, and an attempted second marriage of the wife will be declared void in an action brought by the husband of the second attempted marriage." (N)

As shown by Exception No. 11 (R. p. 47).

12. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (O) to (P), which is as follows:

(O) The State insists under the facts and the law that they have no such right. "That in truth and in fact they

are not legally man and wife, and that they have been conducting themselves and living as such, and asks you so to find beyond a reasonable doubt." (P)

As shown by Exception No. 12 (R. p. 47).

13. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (Q) to (R), which is as follows:

(Q) Before I forget it I want to call your attention to the alleged service by the Sheriff of Caldwell County upon Mrs. Williams. The defendants insist that she was served with process. To make you a party defendant to a lawsuit started and instituted for a divorce in this Court, the Superior Court of Caldwell County, a complaint is filed in the office of the Clerk of the Superior Court, a summons, a document in writing indicating upon its face what it is, is attached thereto, signed by the Clerk of the Superior Court, given to the Sheriff or his deputy or constable, an officer clothed with the power of serving process. This is taken and served upon the defendant, and until that is done, or the defendant voluntarily comes into court in person or by attorney, the Court has no jurisdiction of that defendant, that is here in North Carolina. No man can come into this Court and prepare a complaint and proceed to obtain a [fol. 57] judgment of the Court upon it without serving such process upon the defendant, and it properly served as the law provides, because it involves the rights, liberties and privileges of the State citizenship. (R)

As shown by Exception No. 13 (R. p. 48).

14. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (S) to (T), which is as follows:

(S) Whereupon, the Court charges you as a matter of law that the purported or attempted service of the Sheriff of Caldwell County upon the defendant's wife, Mrs. Williams, of the pleading and papers to this State from the State of Nevada had no effect in law, because the Sheriff had no authority to serve them, and the fact that he did so amounted to nullity, which means nothing. Therefore, she was not brought into the State of Nevada by virtue of the attempted service, and the Court so instructs you. (T)

As shown by Exception No. 14 (R. pp. 48-49).

15. The defendants and each of them assign as error that portion of the Court's charge embraced within the letters (U) to (V), which is as follows:

(U) Our Supreme Court says, in State v. Herron, 175 N. C., page 754, Syllabus 3: Where a decree of divorce in another State is solely relied on as a defense on a trial for bigamy which is attacked by the State for insufficient residence in such other State, with supporting evidence, the defendant must satisfy the jury of the bona fide of his residence for the required time, but not beyond a reasonable doubt, and the same would apply as to bigamous cohabitation and assumption of the marital relation between a man and a woman who are themselves married at the time, and if they so associate themselves together under a contract alleged to be a marital contract in some foreign state being relied upon for a divorce, that Court must have had the [fol. 58] requisite jurisdiction to grant the divorce or divorces in question. (V)

As shown by Exception No. 15 (R. p. 49).

The defendants and each of them except and assign as error the charge of the Court as a whole, for the reason that the charge states the law incorrectly, and for the further reason that the Court charged the jury upon matters of law concerning which there was no evidence with respect thereto.

Service of the record of the foregoing case on appeal to the Supreme Court of North Carolina is hereby accepted and receipt of a copy of the record of said case on appeal is hereby acknowledged.

This the 4th day of April, 1941.

L. S. Spurling, Solicitor for the Sixteenth Judicial District.

RECITAL RE APPEAL BONDS

Appeal Bond for both defendants duly filed.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 59] IN SUPREME COURT OF NORTH CAROLINA

STATE

v.

O. B. WILLIAMS AND LILLIE SHAVER HENDRIX

OPINION—Filed December 10, 1941

Appeal by defendants from Sink, J., and a jury, February-March Term, 1941, Caldwell Superior Court. *No Error.*

The following bill of indictment was sent to the grand jury, who returned a true bill:

"The jurors of the State, upon their oath, present: That O. B. Williams and Lillie Shaver Hendrix, late of the County of Caldwell, on the 4th day of October, in the year of our Lord One Thousand Nine Hundred and Forty, with force and arms, at and in the county aforesaid, unlawfully, wilfully and feloniously did get married to each other in the City of Las Vegas in the State of Nevada, and thereafter returned to the State of North Carolina and did live together and cohabit together in the said State of North Carolina and in Caldwell County, the said O. B. Williams having a living wife, one Mrs. O. B. Williams, living in Caldwell County, North Carolina, at the time of his said marriage to Lillie Shaver Hendrix and the said Lillie Shaver Hendrix having a living husband, one Tom Hendrix, living in Caldwell County, North Carolina, at the time of her marriage to the said O. B. Williams, against the form of the statute in such case made and provided and against the peace and dignity of the State. L. S. Spurling, Solicitor. Returned a True Bill, A. S. Nelson, Foreman Grand Jury."

The defendants entered a plea of "Not guilty." Upon the trial the jury returned the verdict: "Upon their oaths, say that said O. B. Williams and Lillie Shaver Hendrix are guilty as charged in the Bill of Indictment."

The State's evidence: Mrs. Carrie Williams (Mrs. O. B. Williams) testified: "That she was a Wyke before her marriage; that she now lives about four miles east of Granite [fol. 60] Falls, Caldwell County, North Carolina; that she married O. B. Williams on May 30, 1916, in Caldwell County;

that she and Williams lived together as husband and wife between 23 and 24 years, or until about May 7, 1940; that they had reared a family of four children; that they had not lived together since May 7, 1940; that she had no brought any action for divorce against O. B. Williams." Cross-examination: "I happen to have a paper that the Sheriff served on me here. I read it."

Tom (Thos. George) Hendrix testified: "I live in this county. I was married to Lillie Shaver Hendrix about twenty years ago. We lived as husband and wife at Saw Mills in this county until May, 1940. We have not lived together since that time. I have brought no divorce proceedings against my wife." Cross-examination: Witness admits his signature on a card. The card is as follows: Address side: "I. S. Thompson, Attorney-at-Law Rooms 5 & 6 Griffith Bldg., Las Vegas, Nevada." Reverse side: "Dear Sir: Upon receipt of the original appearance, I will sign same. (signed) Thomas Hendrix."

The State introduced a Certificate of Marriage, by the County Recorder, David Farnsworth, dated October 8, 1940, between the defendants in Clark County, Nevada: "State of Nevada, County of Clark, ss. This is to Certify That the undersigned, C. H. Sloan, did, on the 4th day of October, A. D., 1940, join in lawful wedlock O. B. Williams of Las Vegas, State of Nevada, and Lillie Esther Shaver of Las Vegas, State of Nevada, with their mutual consent in the presence of Mrs. Jack Pembroke and Mrs. Charles H. Sloan, who were witnesses. C. H. Sloan, Baptist Minister, Mrs. Jack Pembroke, Mrs. Charles H. Sloan, witnesses. Recorded at the request of C. H. Sloan. Filed Oct. 8, 1940. David Farnsworth, County Recorder." This was duly authenticated.

I. M. Vance, witness for the State, testified, in part: "I have seen Mr. Williams and Mrs. Hendrix there at their home. * * * I have seen them together about eight months. I couldn't say that they cook and eat at their home. They live there."

[fol. 61] T. A. Thompson testified, in part: "I live in Pineola, Avery County. I know Mr. Williams and have known him since some time in February. I met them in Pineola Baptist Church. Q. Do you know whether they are living together and have been living together for some time in Pineola as husband and wife? Ans: Yes. Q. Have they? Ans: Yes. To the best of my knowledge they have

lived together since about August or September, I wouldn't say exactly."

R. G. Buchanan testified, in part: "I live in Pineola, Avery County. I know the two defendants, Mr. Williams and the woman, and have known them for about eight months. They live in Pineola as man and wife." (Cross-examination). I have known them something like six or eight months. I have been to their home twice. I have known their general reputation since they have been in the community, and it is good."

The State rested. Motion by defendants for judgment of nonsuit. Motion overruled. Exception by defendants.

Defendants' Evidence: Exemplified copy of the divorce proceedings from the Eighth Judicial District of the Court of the State of Nevada in and for Clark County in an action entitled "Lillie Esther Hendrix v. Thomas George Hendrix". The complaint alleges:

"The plaintiff complains of the defendant and for cause of action alleges:

1. That on June 27th, 1920, in Icard, State of North Carolina, the plaintiff and the defendant intermarried and ever since have been and are now wife and husband.

II. That plaintiff is now and has been a resident of the State of Nevada for a period of more than six weeks immediately preceding the commencement of this action; she has been and now is, a resident of the County of Clark, State of Nevada.

III. That there is no issue of said marriage.

IV. That the defendant has willfully neglected for the period of over one year immediately preceding the commencement of this action to provide plaintiff with the common necessities of life, although having the ability to do so; that such neglect was and is not the result of poverty [fol. 62] on the part of the defendant, which he could not avoid by ordinary industry.

For a second and separate cause of action against the defendant, plaintiff alleges:

V. That the allegations set forth in paragraphs I, II and III, of plaintiff's first cause of action are true and are hereby made a part of this cause of action.

VI. That during the term of said marriage, the defendant has been guilty of extreme mental cruelty toward this plaintiff by his words, actions and conduct; and plaintiff therefore alleges, that during the term of said married life the defendant has been guilty of extreme cruelty toward the plaintiff.

Wherefore, plaintiff prays judgment against the defendant dissolving the bonds of matrimony now existing between the plaintiff and the defendant, and restoring said parties to the status of single persons. L. S. Thompson, Attorney for plaintiff." Subscribed and sworn to before L. S. Thompson, Notary Public, seal attached on June 26, 1940.

"In the Eighth Judicial District Court of the State of Nevada in and for Clark County. No. 10651. Lillie Esther Hendrix, plaintiff, vs. Thomas George Hendrix, defendant —Affidavit for Publication of Summons. Filed July 22, 1940. Lloyd S. Payne, Clerk, By Helen Scott, Deputy." The affidavit, among other things, says: "That the defendant, Thomas George Hendrix, resides outside the State of Nevada, to-wit, at 391 Fuller Street, Akron, Ohio, and that he is not now and cannot be found in the State of Nevada and that defendant's present place of residence is 391 Fuller Street, Akron, Ohio." Subscribed and sworn to before L. S. Thompson, Notary Public, seal attached July 20, 1940.

"In the Eighth Judicial District Court of the State of Nevada in and for Clark County. No. 10651. Lillie Esther Hendrix, plaintiff, vs. Thomas George Hendrix, defendant —Order Directing Publication of Summons. Filed July 22, 1940. Lloyd S. Payne, Clerk, by Helen Scott, Deputy Clerk." Then is set forth the Order, signed by Roger Foley, District Judge—Summons be by publication: "On [fol. 63] motion of L. S. Thompson, attorney for plaintiff, it is ordered that the service of the summons in this action be made upon the defendant, Thomas George Hendrix, by publication thereof in the Las Vegas Evening Review Journal, a newspaper published in the City of Las Vegas, County of Clark, State of Nevada, hereby designated as the newspaper most likely to give notice to said defendant; that said publication be made for a period of four weeks and at least once a week during said time. And it further in like manner satisfactorily appearing to me that the residence

of said defendant is known as 391 Fuller Street, Akron, Ohio, and that his post office address is 391 Fuller Street, Akron, Ohio; it is ordered and directed that a copy of the summons and complaint in this suit be deposited in the United States Post Office at the City of Las Vegas, County of Clark, State of Nevada, postpaid, directed to said defendant at his said post office address. Dated this 22 day of July, 1940."

"In the Eighth Judicial District Court of the State of Nevada in and for Clark County. Lillie Esther Hendrix, plaintiff, vs. Thomas George Hendrix, defendant—Summons." Then is set forth the summons, duly signed, dated 26th day of June, 1940. "Returned and filed October 4, 1940. Lloyd S. Payne, Clerk, Dolores Yturri, Deputy. I. S. Thompson, Attorney for Plaintiff, Rooms 5 & 6 Griffith Bldg., Las Vegas, Nevada—13-1575. Sheriff's Return. Received at Sheriff's Office, Summit County, July 24th, 9:19 A. M., 1940." "Affidavit of Mailing Copy of Summons and Complaint—Filed Oct. 4, 1940. Lloyd S. Payne, Clerk. By Dolores Yturri, Deputy."

Affidavit made by George W. Thompson (same last name as the Attorney), setting forth the publication and the mailing of the copy of Summons and Complaint, to Akron, Ohio. "Subscribed and sworn to before me, this 10th day of August, 1940. I. S. Thompson, Notary Public. (Attorney in the case)."

Affidavit of foreman of newspaper: "That the attached was continuously published in said newspaper for a period of five weeks from August 7, 1940, to Sept. 4th, 1940, inclusive, being the issues of said newspaper was regularly [fol. 64] issued and circulated on each of the dates above named."

"In the Eighth Judicial District Court of the State of Nevada in and for the County of Clark. No. 10651—Lillie Esther Hendrix, plaintiff, vs. Thomas George Hendrix, defendant. Decree of Divorce. Filed October 4, 1940. Lloyd S. Payne, Clerk, by Helen Scott, Deputy.

The above entitled cause coming on regularly for hearing this day, in open Court, before the Honorable Roger Foley Judge of said Court, presiding; Present Lillie Esther Hendrix, plaintiff, in person and by her attorney, I. S. Thompson, the defendant not appearing and the Court having before it all the files, pleadings and papers in the action and being fully advised in the premises, finds that this action has

been regularly commenced; and that the plaintiff is now and has been a bona fide resident of the County of Clark, State of Nevada for more than six weeks immediately preceding the commencement of this action; that the defendant has been duly and regularly served with summons in this action in the manner prescribed by law and the order of this Court; that after the order was made directing the publication of the summons, the plaintiff used every effort to locate the defendant in order to serve the summons upon him personally but was unable to do so because of his dodging service; that the service of summons was made by publication in The Las Vegas Evening Review Journal, for a period of four weeks and at least once a week during said time; and the default of the defendant has been duly entered for failure to answer plaintiff's complaint within the time allowed by law; and the defendant not having appeared for trial of said action either in person or by attorney and that the Court has complete jurisdiction of the matter both as to the subject matter and the parties to the action. Now, Therefore, after hearing the witnesses sworn and examined in open Court and the said cause having been submitted and the Court being fully advised in the premises and having fully considered all the evidence in the case, finds that all the averments contained in plaintiff's complaint are true as therein alleged; that the plaintiff, Lillie Esther Hendrix, is [fol. 65] without fault in the premises, and is entitled to a Decree of Divorce from the defendant, Thomas George Hendrix, on the grounds of his willful neglect and extreme cruelty toward the plaintiff. It is, Therefore, Ordered, Adjudged and Decreed that a contract of marriage now existing between the plaintiff, Lillie Esther Hendrix, and the defendant, Thomas George Hendrix, be and the same is hereby dissolved, set aside and forever held at naught; and that the said parties are absolutely divorced and released from any and all marital obligations each to the other, and are hereby restored to the status of single persons. Done in open Court, this 4th day of October, 1940. Roger Foley, Dist. Judge."

Then comes the Judgment Roll. Then the "Praecipe for Default", signed by I. S. Thompson, Attorney for plaintiff. Then the "Default Judgment": "Witness my hand and seal of said Court, this 4th day of October, A. D., 1940. Lloyd S. Payne, Clerk, by Dolores Yturri, Dep. Clerk. Seal."

Affidavit as to residence of plaintiff, in part: "That on said last named date Lillie Esther Hendrix, the plaintiff above named, came there to live, rented a room and is still living there; that said Lillie Esther Hendrix was present every day, at said place, from [illegible]date she came there, May 15, 1940, up to and including Ju[illegible]26, 1940. Lillie Roesselet. Subscribed to and sworn before me, this 16th day of September, 1940. I. S. Thompson, Notary Public. Seal. Filed October 4, 1940. Lloyd S. Payne, Clerk, by Helen Scott, Deputy."

Affidavit of plaintiff "Of non military service of defendar —filed Oct. 4, 1940, signed Lillie Esther Hendrix. Subscribed and sworn to before me, this 1st day of October, 1940. I. S. Thompson, Notary Public—Seal."

Then comes the testimony of plaintiff before Roger Foley, Dist. Judge, confirming what she had sworn to in her Complaint and as to her residence. "Q. Where do you reside? Ans: Las Vegas, Nevada. Q. Las Vegas, Clark County, Nevada? Ans: Yes. Q. You filed your complaint on June 26, 1940; had you re-ided here a full six weeks prior to that time? Ans: Yes. Q. When did you come to Clark County, [fol. 66] Nevada? Ans: May 15, 1940."

O. B. William was called as a witness for plaintiff: (By Mr. Thompson) "Q. Where were you living on the 15th day of May, 1940? Ans: At the Alamo Court, Las Vegas. Q. When did you first see her at that Court? Ans: May 15, 1940. Q. So that she lived there at that Alamo Court until the day she filed her complaint? Ans: Yes, sir. Q. You saw her every day? Ans: Yes, sir."

Defendants' Exhibit No. 2. (Exemplified copy of the divorce proceedings in the Eighth Judicial Court of the State of Nevada, in and for Clark County, and that certain action entitled: Otis Baxter Williams v. Carrie Ora Williams): In the Eighth Judicial Court of the State of Nevada in and for Clark County. No. 10650. Otis Baxter Williams, plaintiff, vs. Carrie Ora Williams, defendant. Complaint. Filed June 26, 1940. Lloyd S. Payne, Clerk, by Tilla Cronick, Deputy. The plaintiff complains of the defendant and for cause of action alleges:

1. That in the month of November, 1916, in Granite Falls, State of North Carolina, the plaintiff and the defendant intermarried and ever since have been, and are now, husband and wife.

2. That the plaintiff is now and has been a resident of the State of Nevada for the period of more than six weeks immediately preceding the commencement of this action.

That for more than six weeks immediately preceding the commencement of this action he has been, and is now, a resident of the County of Clark, State of Nevada.

3. That during the term of said marriage the defendant has been guilty of extreme cruelty toward this plaintiff, by her words, actions and conduct;

And plaintiff, therefore, alleges that during the term of said married life the defendant has been guilty of extreme cruelty toward this plaintiff.

Wherefore, plaintiff prays judgment against the defendant dissolving the bonds of matrimony now existing between [fol. 67] the plaintiff and the defendant, and restoring said parties to the status of single persons. I. S. Thompson, Attorney for plaintiff." Subscribed and sworn to before I. S. Thompson, Notary Public, June 26, 1940.

Then follows: (a) Affidavit for Publication of Summons, filed July 18, 1940, subscribed and sworn to July 16, 1940, before I. S. Thompson, Notary Public, seal attached; (b) Order Directing Publication, signed by Roger Foley, District Judge, dated July 18, 1940; (c) Summons, dated June 26, 1940; (d) Affidavit of Sheriff.

"Sheriff's Return: State of Nevada, County of Clark—ss. I, J. F. Parlier, the duly elected, qualified and acting Sheriff of said County and State, (error) do hereby certify and return that I received the within summons on the 18th day of July, A. D., 1940, and that I personally served the same upon the within named defendant, Mrs. O. B. Williams, on the 22nd day of July, A. D., 1940, at Granite Falls, County of Caldwell, North Carolina, by then and there delivering to her, the said defendant, personally a copy of said summons attached to a certified copy of the complaint in the within entitled action. Dated this 22nd day of July, A. D., 1940. J. F. Parlier, Sheriff Caldwell County, State of North Carolina." Certificate as to being Sheriff, by Clerk Superior Court of Caldwell County, N. C.

(e) Decree of Divorce, signed by Roger Foley, District Judge, August 26, 1940. (f) Then comes Judgment Roll; (g) Praecipe for Default; (h) Default, and certain certificates. Defendants rest.

At the close of all the evidence the defendants and each of them renewed their motion for judgment as of nonsuit. Motion overruled as to each defendant, and the defendants and each of them excepted.

The Judgment of the Court below is as follows: "Upon the verdict as rendered by the jury, the judgment of the Court as to the male defendant, O. B. Williams, is that the said male defendant be confined in the State Prison at Raleigh, North Carolina; for not less than three nor more than ten years, and be assigned to hard labor as provided by law. As to the female defendant, Lillie Shaver Hendrix, [fol. 68] the judgment of the Court is that she be confined in the State Prison at Raleigh, North Carolina, for not less than three nor more than five years and assigned to perform such labor as provided for women prisoners by law."

Upon the coming in of the verdict the defendants and each of them, in apt time, moved that the Court set the verdict aside as being against the greater weight of the evidence and the law in the case, and for errors assigned and to be assigned. Motion denied in each case as to each defendant, and the defendants and each of them excepted, and assigned error. To the Judgment of the Court defendants and each of them excepted, assigned error and appealed to the Supreme Court. The defendants made other exceptions and assignments of error and appealed to the Supreme Court. The material ones will be set forth in the opinion.

The record of exemplification introduced by defendants is not set forth in proper order; therefore the facts, as we have set them forth, follow the order of the exemplification.

Attorney General McMullan and Asst. Attorneys General Bruton and Patton for the State. Pritchett & Strickland and George Hovey for Defendants.

CLARKSON, J.:

At the close of the State's evidence, and at the conclusion of all the evidence, the defendants made motion in the Court below for judgment of nonsuit. N. C. Code, 1939 (Michie), Sec. 4643. The Court below overruled these motions and in this we can see no error.

The defendants are indicted under N. C. Code, supra, Sec. 4342, which is as follows: "If any person being mar-

ried shall marry any other person during the life of the former husband or wife, every such offender, and every person counseling, aiding or abetting such offender, shall be guilty of a felony, and shall be imprisoned in the state's prison or county jail for any term not less than four months nor more than ten years. Any such offense may be dealt with, tried, determined and punished in the county where the offender shall be apprehended, or be in custody, as if [fol. 69] the offence had been actually committed in that county. If any person, being married, shall contract a marriage with any other person outside of this state, which marriage would be punishable as bigamous if contracted within this state, and shall thereafter cohabit with such person in this State, he shall be guilty of a felony and shall be punished as in cases of bigamy. Nothing contained in this section shall extend to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past; and shall not have been known by such person to have been living within that time; nor to any person who at the time of said second marriage shall have been lawfully divorced from the bond of the first marriage; nor to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction."

At common law, the second marriage was always void and from the earliest history of England polygamy has been treated as an offense against society. It is considered as a crime against the marital relation rather than against the wife. Bigamy and polygamy are likewise crimes by the laws of all civilized and Christian countries.

Mr. Justice Waite said: "From that day (the date of the enactment of the bigamy statute in Virginia, 12 Hening's Stat. 691), to this we think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offense against society, cognizable by the civil courts and punishable with more or less severity." Reynolds v. United States, 98 U. S., 145 (165), 25 L. Ed., 244.

The defendants' exception and assignment of error to the following question and answer, elicited from the State's witness T. A. Thompson cannot be sustained: "Q. Do you know whether they are living together and have been living

together for sometime in Pineola as husband and wife? Ans: Yes. Q. Have they? Ans: Yes."

R. G. Buchanan, a witness for the State, later testified: [fol. 70] "I live in Pineola, Avery County. I know the two defendants, Mr. Williams and the woman, and have known them for about eight months. They live in Pineola as man and wife. (Cross-examination.) I have known them something like six or eight months. I have been to their home twice. I have known their general reputation since they have been in the community, and it is good." There was no exception or assignment of error made by defendants to this later testimony. In fact, the defendants' cross-examined the witness. This evidence was plenary to be submitted to the jury under the Bill of Indictment that defendants were living together in Avery County, North Carolina, as man and wife. They were tried in Caldwell County, North Carolina, but the statute, Sec. 4342, supra, permits this.

In Shelton v. R. R., 193 N. C., 670 (674), it is written: "It is thoroughly established in this State that if incompetent evidence is admitted over objection, but the same evidence has theretofore or thereafter been given in other parts of the examination without objection, the benefit of the exception is ordinarily lost. Smith v. R. R., 163 N. C., 143; Tillett v. R. R., 166 N. C., 515; Beaver v. Fetter, 176 N. C., 334; Marshall v. Tel. Co., 181 N. C., 410." State v. Hudson, 218 N. C., 219 (230).

The defendants contend that they are protected under the proviso to 4342, supra: "Nothing contained in this section shall extend to any person marrying a second time . . . nor to any person who at the time of said second marriage shall have been lawfully divorced from the bond of the first marriage."

The defendants contend that the question involved is: "Can the Courts of North Carolina sustain a conviction upon an indictment charging bigamous cohabitation under Consolidated States, N. C. Code, section 4342, when the evidence shows that both of the defendants have been legally and properly divorced under the laws of a sister State?" We do not think from this record that the defendants can make the contention in this jurisdiction.

[fol. 71] *As to defendant O. B. Williams:* The evidence is to the effect that defendant O. B. Williams was married

to Carrie Ora (Wyke) Williams on May 10, 1916, in Caldwell County, N. C.; that they lived together as husband and wife between 23 and 24 years, or until about May 7, 1940. That they had reared a family of four children. That she had not brought any action for divorce against him. That she lives about four miles East of Granite Falls, Caldwell County, N. C. On June 26, 1940, O. B. Williams brought an action against Carrie Ora Williams, in Clark County, Nevada. The complaint alleges that they were married in Granite Falls, N. C., in the month of November, 1916, and are now husband and wife. That for a period of more than six weeks immediately preceding the commencement of this action, he has been and now is a resident of Clark County, Nevada. He alleges that his wife during the time of their marriage has been guilty of extreme cruelty towards him, by her words, actions and conduct. The plaintiff in that action prays judgment against the defendant dissolving the bonds of matrimony existing between them and restoring said parties to the status of single persons. This complaint was filed by I. S. Thompson, Attorney. It was subscribed and sworn to before I. S. Thompson, a Notary Public, on June 26, 1940, who attached his seal. The affidavit of Publication of Summons was filed on July 18, 1940. It was subscribed and sworn to before I. S. Thompson on July 16, 1940, who attached his seal of office. The Order directing Publication of Summons was made by Roger Foley, District Judge, on July 18, 1940. The Summons issued by the Clerk was dated June 26, 1940. Below was written "I. S. Thompson, Atty. for plaintiff." Summons return and filed August 22, 1940. The order for Publication of Summons and Complaint by Roger Foley, District Judge (1) by publication for a period of four weeks, (2) on defendant in North Carolina by mailing.

The following affidavit was filed: "I received the within summons on the 18th day of July, A. D., 1940, and that I personally served the same upon the within named defendant, Mrs. O. B. Williams, on the 22nd day of July, A. D., 1940, at Granite Falls, County of Caldwell, North Carolina, [fol. 72] by then and there delivering to her, the said defendant, personally, a copy of said summons attached to a certified copy of the complaint in the within entitled action. Dated this 22nd day of July, A. D., 1940. J. F. Parlier, Sheriff Caldwell County, State of North Carolina." Affidavit of Parlier, dated July 22, 1940, as to service of sum-

mons before F. H. Hoover, Clerk Superior Court of above State and County. Decree on August 26, 1940, by Roger Foley, District Judge—the same practically as the decree of Divorce heretofore set out in full which was granted Lillie Esther Hendrix. The only difference was to fit the facts as to the method of service. This action was numbered 10650.

Then comes the Judgment Roll, Praecipe for Default, signed by I. S. Thompson, Attorney for plaintiff. Then Default Order, signed by the Clerk, on August 26, 1940. Then certain certificates, not material.

As to defendant Lillie Shaver Hendrix: The evidence is to the effect that defendant, Lillie Shaver Hendrix was married to George Thomas Hendrix about 20 years ago (time of trial February-March Term, 1941), and lived in Caldwell County, N. C., as husband and wife until May, 1940. That he brought no action for divorce against her. That Lillie Shaver Hendrix (action entitled Lillie Esther Hendrix), as plaintiff, brought an action against George Thomas Hendrix on June 26, 1940, in Clark County, Nevada. The complaint alleges that they were married on June 27, 1920, in Icard, N. C., and are now husband and wife. That for a period of more than six weeks immediately preceding the commencement of this action, she has been and is now a resident of Clark County, Nevada. She alleges that her husband wilfully neglected, for over a year immediately preceding the action, to provide her with the common necessities of life, though able to do so and has been guilty of extreme mental cruelty towards her by words, action and conduct, and during the term of their married life has been guilty of extreme cruelty towards her. The plaintiff prayed judgment against the defendant dissolving the bonds of [fol. 73] matrimony existing between them, restoring said parties to the status of single persons. It was subscribed and sworn to before I. S. Thompson, a Notary Public, on June 26, 1940, who attached his seal. He was also her attorney.

The affidavit for Publication of Summons was filed July 22, 1940, subscribed and sworn to on July 20, 1940, before I. S. Thompson, Notary Public, attaching seal. The Order Directing Publication of Summons was made by Roger Foley, District Judge. The Summons issued by the Clerk was dated June 26, 1940, and below was written "I. S. Thompson, Attorney for plaintiff". Affidavit of Mailing

copy of Complaint to defendant at Akron, Ohio, setting forth certain facts, was signed by Geo. W. Thompson (the last name the same as the Attorney), not a party to the action, and subscribed and sworn to Aug. 10, 1940, before I. S. Thompson, Notary Public, attaching seal. Order Directing Publication of Summons was made by Roger Foley, July 22, 1940, and also service on defendant at Akron, Ohio—which was never served.

Decree of Divorce was filed October 4, 1940, by Roger Foley, District Judge. Then comes Judgment Roll; Praecipe for Default, signed by I. S. Thompson, Attorney for plaintiff; then Default Order, signed by the Clerk, Oct. 4, 1940. Then Affidavit of Lillie Roesselet, dated Sept. 16, 1940, as to plaintiff's residence from May 15, 1940 up to and including June 26, 1940. This was subscribed and sworn to Sept. 16, 1940, before I. S. Thompson, Notary Public, attaching seal, Attorney for plaintiff, and also testimony of O. B. Williams as to her residence. Then affidavit of non-military service of defendant, filed Oct. 4, 1940, signed by plaintiff and subscribed and sworn to before I. S. Thompson, Notary Public, seal attached. This action was numbered 10651.

In North Carolina the law is somewhat drastic, as it should be, in granting an absolute divorce. N. C. Code, supra, Sec. 1659, is as follows: "Marriage may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the party injured, made as by law provided, in the following cases: 1. If the husband or wife commit adultary," etc.

Section 1659(a), is as follows: "Marriages may be dis- [fol. 74] solved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for two years, and the plaintiff in the suit for divorce has resided in the state for a period of one year. This section shall be in addition to other acts and not construed as repealing other laws on the subject of divorce." There are other provisions not necessary to set forth.

Section 1661, provides that the affidavit filed with the complaint must state: "That the facts set forth in the complaint are true to the best of affiant's knowledge and belief, and that the said complaint is not made out of levity or by collusion between husband and wife; and if for di-

vorce, not for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the complaint. The plaintiff shall also set forth in such affidavit, either that the facts set forth in complaint, as grounds for divorce, have existed to his or her knowledge at least six months prior to the filing of the complaint, and that complainant has been a resident of the state for one year next preceding the filing of the complaint," etc.

If these allegations above are not shown, the Court has no jurisdiction. In Holloman v. Holloman, 127 N. C., 15 (16), it is said: "That requirement is for the good of the public at large, and not for the convenience or benefit of the parties to the action. The affidavit was intended to prevent bad faith and collusion on the part of the parties to the action, and is an indispensable part of the complaint and application and, if it is wanting, there is no jurisdiction in the Court." Woodruff v. Woodruff, 215 N. C., 685 (689).

In this State a jury must pass on the facts. N. C. Code, supra, Sec. 1662, is as follows: "The material facts in every complaint asking for a divorce shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a jury, and on such trial neither the husband nor wife shall be a competent witness to prove [fol. 75] the adultery of the other, nor shall the admissions of either party be received as evidence to proce such facts."

In 27 Corpus Juris Secundum, p. 1295, the following is stated: "Where plaintiff only is domiciled in the state of the forum, and has obtained a decree of divorce for a cause recognized as valid in such state, after constructive service of process on defendant, according to the course and practice of the court, a court of another state will recognize the decree when required to do so by a statute of that state; but it is not obliged to do so by the full faith and credit clause of the federal constitution except where, as shown infra this section, the matrimonial domicile is in the state where the decree is rendered. Even though a court of another state is not required by constitution or statute to recognize and give effect to the decree, it may do so as a matter of comity and in some states will do so unless there is some good and valid reason to the contrary; but in a few states the courts require the presence of certain conditions

before they will extend recognition; and in other states recognition is refused," citing many authorities. Pridgen v. Pridgen, 203 N. C., 533.

In 27 C. J. S., sec. 333, at pp. 1296-7, we find: "Where, however, the state of plaintiff's domicile is not also the matrimonial domicile, a decree of divorce based on substituted service and without personal service on, or appearance by, defendant, although enforceable in the jurisdiction where rendered, is not entitled to obligatory recognition or enforcement in other states or in the District of Columbia in virtue of the full faith and credit clause of the federal constitution, although the courts of other states or of the District of Columbia are not prevented from recognizing such decrees on principles of comity if they see fit, and will do so, as a rule, unless contrary to public policy or to good morals, but they are not bound to do so, and the courts of some states do not."

The sole question arising under Article IV, Section 1, of the Federal Constitution in this case is whether a divorce granted in the State where the plaintiff alone is domiciled [fol. 76] is entitled to full faith and credit when the defendant is only served with process constructively and makes no appearance in the action. This question is answered in the negative by the celebrated case of Haddock v. Haddock, 201 U. S., 562, 26 Sup. Ct. 525, 50 L. Ed., 867, justly recognized as a landmark in the law of foreign divorces.

The divorces obtained by the defendants in actions in Nevada against North Carolina citizens, with service by publication in one case and personal service outside the state in the other, clearly come within the scope of the decision in Haddock v. Haddock, supra, and recognition is not required by the Federal Constitution.

The carefully prepared brief of defendants cites cases in other jurisdictions that differ from the well-settled law in this State. The most recent of our cases is Tyson v. Tyson, 219 N. C., 617 (618-19), which says: "It is fundamental that a State 'has no power to enact laws to operate upon things or persons not within her territory.' Irby v. Wilson, supra (21 N. C., 568). Notice and hearing are essential to due process of law under the Fourteenth Amendment of the Constitution of the United States, McGehee, Due Process of Law, 76; Honnold, Supreme Court Law, 847; Scott v. McNeal, 154 U. S., 34 (36), 38 L. Ed., 896 (901); and there is neither notice nor hearing under such fictional

service. Pennoyer v. Neff, supra (95 U. S., 714, 24 L. Ed., 565). Whatever the effectiveness of such a proceeding where both parties are within the jurisdiction of the forum, it has no extraterritorial effect upon a resident of another State or the matrimonial status there existing, unless the laws of the State of such residence recognize the proceeding as valid. Here they do not. It has been the law of this State since early times that a divorce decree obtained in a foreign State against a resident of this State, where there has been no personal service within the jurisdiction of the forum, and no answer or appearance or other participation in the proceeding which might be considered its equivalent, is void here. Irby v. Wilson, supra (21 N. C., 568); Arrington v. Arrington, 102 N. C., 491 (512), 9 S. E. 200; Harris [fol. 77] v. Harris, 115 N. C., 587; 20 S. E., 187; S. v. Herron, 175 N. C., 754, 94 S. E., 698; Pridgen v. Pridgen, supra (203 N. C., 533, 539)."

The defendants excepted and assigned error to the following portion of the charge of the Court—a contention, but correct in principle: "The State contends that these defendants each had a spouse living in the State of North Carolina. That the male defendant has a wife living, and had at the time of the second marriage or purported marriage contract. That the feme defendant, the female defendant, had at that time a living husband in the State of North Carolina. That no service was had upon either of them that in law was binding upon the persons residing in Caldwell County, North Carolina, that is, Mrs. O. B. Williams and Mr. Hendrix. That neither of these persons, to-wit, Mrs. Williams and Mr. Hendrix, personally or by attorney, made any appearance in the courts of Nevada and, therefore, the entire proceedings in the State of Nevada was void. That they went to the State of Nevada not to establish a bona fide residence, but solely for the purpose of taking advantage of the laws of that State and obtain a divorce through fraud upon that court."

The Court charged the law fully, as laid down in Pridgen v. Pridgen, supra, 203 N. C., 533 (539), also State v. Herron, supra, 175 N. C., 754. In these cases many authorities are cited to sustain the charge in the Court below.

In regard to the postal card, the Court charged as follows (which we think correct): "The defendants offered a card in evidence, and with respect to that card the Court charges you, gentlemen of the jury, that the card indicated or agreed

to do certain things, but the card within itself, in law, does not constitute a personal appearance. If the husband of Mrs. Hendrix had done what the card purports that he would do if the papers were sent to him, that would have constituted a personal appearance, but by promising to make a personal appearance by attorney does not constitute one. It takes more than that. * * * It takes more than a promise to make an appearance or accept service or to constitute service. There must be a carrying out of [fol. 78] that promise." After reciting the facts: "Whereupon, the Court charges you as a matter of law that the purported or attempted service of the Sheriff of Caldwell County upon the defendant's wife, Mrs. Williams, of the pleadings and papers to this State from the State of Nevada had no effect in law, because the Sheriff has no authority to serve them, and the fact that he did so amounted to nullity, which means nothing. Therefore, she was not brought into the State of Nevada by virtue of the attempted service, and the Court so instructs you."

This Court has held that a bona fide belief in the invalidity of a first marriage is not a defense to a prosecution for bigamy when in fact the marriage was valid and subsisting. State v. Robbins, 28 N. C., 23, supra. There seems to be no reason why a defendant's belief that a former marriage has been dissolved when in fact it has not been under the laws of this State should be any more efficacious as a defense. It is submitted, therefore, that the rule established in Irby v. Wilson, 21 N. C., 568, that foreign *ex parte* divorces will not be recognized in this State applies in criminal cases to the same extent that it applies in civil cases.

We think the charge correct from the facts appearing of record. Most of the exceptions and assignments of error are to the charge of the Court below, none of them can be sustained from the view of the well-settled law we take in this case. None constitute prejudicial or reversible error.

The record discloses that defendant O. B. Williams left his wife, with whom he had been married and lived as husband and wife for some twenty-three years and had reared a family of four children, in Caldwell County, N. C., on May 7, 1940. On June 26, 1940, a little over a month later, a summons and complaint were filed, signed by him, in the Eighth Judicial Court of Clark County, Nevada (Otis Baxter Williams vs. Carrie Ora Williams) alleging that he was

a resident for more than six weeks immediately preceding the commencement of the action of said County and State. The complaint alleged as a cause for divorce against the [fol. 79] defendant "extreme cruelty", etc. This complaint was filed by I. S. Thompson, attorney for O. B. Williams, plaintiff. Thompson was also Notary Public and it was subscribed and sworn to before him. Affidavit of publication was subscribed and sworn to before I. S. Thompson who was Attorney and Notary Public. No personal service on defendant, Carrie Ora Williams, or appearance by her was made. The Sheriff of Caldwell County, N. C., delivered a summons and complaint on July 18, 1940. Decree of Divorce signed by Roger Foley, District Judge, signed Aug. 26, 1940, finds certain facts and grants the divorce without a jury finding the facts. On October 4, 1940, O. B. Williams married Lille Esther Hendrix in Clark County, Nevada. They returned almost immediately after the marriage and lived together as husband and wife in Avery County, North Carolina, near Lenoir, North Carolina.

The record discloses that defendant Lille Shaver Hendrix was married to Thomas George Hendrix about twenty years and they lived together as husband and wife until May, 1940. On June 26, 1940, a little more than a month after leaving her husband, she had a summons issued and filed a complaint against him in the Eighth Judicial Court of Clark County, Nevada, entitled Lillie Esther Hendrix vs. Thomas George Hendrix, alleging that she was a resident for more than six weeks immediately preceding the commencement of the action and was a resident of said County and State; alleging cause for divorce that her said husband had "wilfully neglected to provide for her", etc., and "extreme mental cruelty". This complaint was filed by I. S. Thompson, her attorney. Thompson was also a Notary Public and it was subscribed and sworn to before him as Notary Public. Affidavit of Publication was subscribed and sworn to before her attorney, and as Notary Public. No personal service on defendant, George Thomas Hendrix, or appearance by him. The postal card introduced in evidence was no acceptance of service or appearance. The summons was published in a local paper once a week for four weeks. Decree of divorce signed by Roger Foley, Dist. Judge, October 4, 1940, finds certain facts and grants the divorce without a jury finding the facts. On

[fol. 80] the same day, October 4, 1940, she married O. B. Williams in Clark County, Nevada. They came almost immediately after the marriage to North Carolina, and lived together as husband and wife in Avery County, near Lenoir, North Carolina. They employed the same Attorney, filed summons and complaint on the same day, and immediately married on the day the decree of divorce was granted Lillie Shaver Hendrix. O. B. Williams had obtained a decree of divorce a short time before, he was represented by the same Attorney and the decrees of divorce were granted by the same Court. The actions were numbered 10650 and 10651. The record discloses not only no personal service, as required by the decisions of this Court, but all the evidence indicates collusion between the defendants, and bad faith in attempting to secure decrees of divorce, contrary to the laws of this State.

For the reasons given, we see no prejudicial or reversible error in the trial in the Court below.

No Error.

Barnhill, J., concurring

Stacy, C.J., & Winborne, J., join in concurring opinion.

[fol. 81] In Supreme Court of North Carolina

No. 289

State

vs.

O. B. Williams and Lillie Shaver Hendrix

Concurring Opinion—Filed December 10, 1941

Barnhill, J., concurring:

When the State offered evidence tending to show the first marriage of each of the defendants; that the wife of the defendant Williams and the husband of the defendant Hendricks are each still living; the second contracts of marriage and subsequent cohabitation of the defendants within this State it made out a prima facie case which, nothing else appearing, would require a verdict of guilty. That each of the defendants had been divorced was a fact to be

proven in defense. S. v. Norman, 13 N. C., 222; S. v. Melton, 120 N. C., 591; S. v. Herron, 175 N. C., 754, 94 S. E., 698; Thompson v. S., 20 Ala., 12; Com v. Bolich, 18 Pa. Co. Ct., 401. Hence the question here presented is this: Have the defendants presented evidence of a valid defense?

The decrees of divorce relied upon by defendants were obtained in the State of Nevada on constructive service. The court rendering the judgments had no jurisdiction of the person of the respective defendants therein. Arrington v. Arrington, 102 N. C., 491 and 127 N. C., 190; Harris v. Harris, 115 N. C., 587; Pridgen v. Pridgen, 203 N. C., 533, 166 S. E., 591; Tyson v. Tyson, 219 N. C., 617; Thompson v. State, supra; Bell v. Bell, 181 U. S., 175, 45 L. Ed., 804.

Marriage is regarded as creating a status within the protection and control of the laws of the matrimonial domicile which, from considerations of public policy, will not be deemed to be destroyed unless the resident party has been brought within the jurisdiction of the foreign state by more than constructive service. Tyson v. Tyson, supra.

Judgments of divorce rendered by the foreign state are not protected by the full faith and credit clause (Art. IV, sec. 1) of the Federal Constitution. The mere domicile within the State of one party to the marriage does not give the courts of the State jurisdiction to render a decree of divorce enforceable in all the other States by virtue of the full faith and credit clause of the Federal Constitution against a nonresident who did not appear and was only constructively served with notice of the pendency of the action. Haddock v. Haddock, 201 U. S., 562, 50 L. Ed., 867; S. v. Herron, supra; Thompson v. S., supra. They are subject to attack for want of jurisdiction of the rendering [fol. 82] court over the person of the defendant named therein. Thompson v. Whitman, 85 U. S., 897; Haddock v. Haddock, supra; S. v. Herron, supra.

That the marriage of the defendants was consummated in another State is immaterial. "If any person, being married, shall contract a marriage with any other person, outside of this State, which marriage would be punishable as bigamous if contracted within this State, and shall thereafter cohabit with such person in this State, he shall be guilty of a felony and shall be punished as in cases of biganiy". C. S. 4342; State v. Moon, 178 N. C., 715, 100 S. E., 614; S. v. Herron, supra.

It follows that under our law the defendants failed to establish a divorce or second marriage effective as a valid defense to the prosecution. The divorce decrees, being rendered upon constructive service, were without force or effect within this State. Their subsequent marriage, had it been contracted in this State, was bigamous. Cohabitation thereunder within this State constituted a bigamous cohabitation.

For the reasons stated I agree that the judgment below should be affirmed.

Stacy, C. J., and Winborne, J., join in this opinion.

[fol. 83] In Supreme Court of North Carolina

[Title omitted]

Clerk's Certificate and Docket Entries

Appeal docketed 7 June, 1941.
Case argued 7 October, 1941.
Opinion filed 10 December, 1941.
Final Judgment entered 10 December, 1941.

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and proceedings in the above entitled case, as the same now appear from the originals on file in my office.

I further certify that the rules of this Court prohibit filing of petition to rehear in criminal actions.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this 21 January, 1942.

Adrian J. Newton, Clerk of the Supreme Court of the State of North Carolina. (Seal.)

[fol. 84] Supreme Court of the United States

Order Allowing Certiorari—Filed March 30, 1942

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.